

RECORDATION NO. 7990 *B* Filed & Recorded

JUL 19 1977-9 45 AM

CRAVATH, SWAINE & MOORE

ONE CHASE MANHATTAN PLAZA

MAURICE T. MOORE  
BRUCE BROMLEY  
ROSWELL L. GILPATRICK  
ALBERT R. CONNELLY  
FRANK H. DETWEILER  
GEORGE G. TYLER  
CHARLES R. LINTON  
WILLIAM B. MARSHALL  
RALPH L. MCAFEE  
ROYALL VICTOR  
ALLEN H. MERRILL  
HENRY W. DEKOSMIAN  
ALLEN F. MAULSBY  
STEWART R. BROSS, JR.  
HENRY P. RIORDAN  
JOHN R. HUPPER  
SAMUEL C. BUTLER  
WILLIAM J. SCHRENK, JR.  
BENJAMIN F. CRANE  
FRANCIS F. RANDOLPH, JR.  
JOHN F. HUNT, JR.  
GEORGE J. GILLESPIE, III  
RICHARD S. SIMMONS  
WAYNE E. CHAPMAN  
THOMAS D. BARR

INTERSTATE COMMERCE COMMISSION

GEORGE T. LOWE  
ROBERT ROSENMAN  
JAMES H. DUFFY  
ALAN J. HRUSKA  
JOHN E. YOUNG  
JAMES M. EDWARDS  
DAVID G. ORMSBY  
DAVID L. SCHWARTZ  
RICHARD J. HIEGEL  
FREDERICK A. O. SCHWARZ, JR.  
CHRISTINE BESHAR  
ROBERT S. RIFKIND  
DAVID BOIES  
DAVID O. BROWNWOOD  
PAUL M. DODYK  
RICHARD M. ALLEN  
THOMAS R. BROME  
ROBERT D. JOFFE  
ROBERT F. MULLEN  
ALLEN FINKELSON  
RONALD S. ROLFE  
JOSEPH R. SAHID  
PAUL C. SAUNDERS  
MARTIN L. ZENZEL

NEW YORK, N.Y. 10005

212 HANOVER 2-3000

INTERNATIONAL TELEX: 620976

TELETYPE: 710-581-0338

TELEX: 125547

JUL 19 1977-9 45 AM

RECORDATION NO. 7990 Filed & Recorded

JUL 19 1977-9 45 AM

INTERSTATE COMMERCE COMMISSION

RECORDATION NO. 7990-A Filed & Recorded

JUL 19 1977-9 45 AM

INTERSTATE COMMERCE COMMISSION

CARLYLE E. MAW  
L. R. BRESLIN, JR.  
HAROLD R. MEDINA, JR.  
COUNSEL

4, PLACE DE LA CONCORDE  
75008 PARIS, FRANCE  
TELEPHONE: 265-81-54  
TELEX: 290530

TERMINAL HOUSE  
52, GROSVENOR GARDENS  
LONDON, SW1W 0AU, ENGLAND  
TELEPHONE: 01-730-5203  
TELEX: 917840

CABLE ADDRESSES  
CRAVATH, N.Y.  
CRAVATH, PARIS  
CRAVATH, LONDON S.W.1

July 18, 1977

RECORDATION NO. 7990 Filed & Recorded

Dear Sir: JUL 19 1977-9 45 AM

INTERSTATE COMMERCE COMMISSION

recording pursuant to Section 20c of the Interstate Commerce Act, on behalf of Miller Brewing Company and Southern Railway Company, are counterparts of the following:

- (1) Conditional Sale Agreement dated as of May 15, 1977, between The Connecticut Bank and Trust Company, Trustee, as vendee, and Fruit Growers Express Company, as builder, vendor;
- (2) Lease of Railroad Equipment dated as of May 15, 1977, between Miller Brewing Company and Southern Railway Company, as lessees, and The Connecticut Bank and Trust Company, Trustee, as lessor;
- (3) Assignment of Lease and Agreement dated as of May 15, 1977, between The Connecticut Bank and Trust Company, Trustee, as lessor, vendee and Mercantile-Safe Deposit and Trust Company, as agent, vendor; and
- (4) Agreement and Assignment dated as of May 15, 1977, between Fruit Growers Express Company, as builder, and Mercantile-Safe Deposit and Trust Company, as agent, assignee.

The addresses of the parties to the aforementioned agreements are:

*Very D. Uttered*  
*See ledger*

## Vendee-Lessor:

The Connecticut Bank and Trust Company, Trustee,  
One Constitution Plaza,  
Hartford, Connecticut 06115.

## Builder-Vendor:

Fruit Growers Express Company,  
1101 Vermont Avenue, N.W.,  
Washington, D.C. 20005.

## Lessees:

Miller Brewing Company,  
4000 West State Street,  
Milwaukee, Wisconsin 53208.

Southern Railway Company,  
P. O. Box 1808,  
Washington, D.C. 20013.

## Agent-Vendor-Assignee:

Mercantile-Safe Deposit and Trust Company,  
P.O. Box 2258,  
Two Hopkins Plaza,  
Baltimore, Maryland 21203.

The Equipment covered by the aforementioned agreements consists of 250 70-ton 52'6" XPI insulated Box Cars bearing the road numbers 650 through 899 (both inclusive) of Southern Railway Company, and also bearing the legend "Ownership subject to a Security Agreement filed under the Interstate Commerce Act, Section 20c".

Enclosed is a check for \$100 for the required recordation fee. Please accept for recordation one counterpart of each of the enclosed agreements, stamp the remaining counterparts with your recordation number and return them to the delivering messenger along with your fee receipt, addressed to the undersigned.

Very truly yours,

  
Paul W. Voegeli

Robert L. Oswald, Esq., Secretary,  
Interstate Commerce Commission,  
Washington, D.C. 20423.

Encls.  
72A  
BY HAND

**Interstate Commerce Commission**

**Washington, D.C. 20423**

**7/19/77**

**OFFICE OF THE SECRETARY**

**Paul W. Voegeli  
Cravath, Swaine & Moore  
One Chase Manhattan Plaza  
New York, N.Y. 10005**

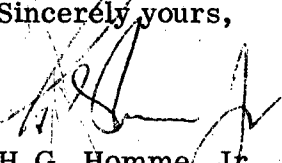
**Dear Sir:**

The enclosed document(s) was recorded pursuant to the  
provisions of Section 20(c) of the Interstate Commerce Act,

49 U.S.C. 20(c), on **7/19/77** at **9:45am**,

and assigned recordation number(s) **8890, 8890-A, 8890-B & 8890-C**

Sincerely yours,

  
**H.G. Homme, Jr.  
Acting Secretary**

**Enclosure(s)**

**SE-30-T  
(6/77)**

8890  
RECORDATION NO. \_\_\_\_\_ Filed & Recorded

JUL 19 1977 -9 45 AM

INTERSTATE COMMERCE COMMISSION

---

CONDITIONAL SALE AGREEMENT

Dated as of May 15, 1977

between

THE CONNECTICUT BANK AND TRUST COMPANY,  
as Trustee under a Trust Agreement  
dated as of April 7, 1977, as amended,  
with Michigan National Bank,  
ITT Industrial Credit Company  
and The Fifth Third Leasing Company

and

FRUIT GROWERS EXPRESS COMPANY

---

CONDITIONAL SALE AGREEMENT dated as of May 15, 1977, between FRUIT GROWERS EXPRESS COMPANY (hereinafter called the Vendor or Builder as more particularly set forth in Article 1 hereof), and THE CONNECTICUT BANK AND TRUST COMPANY, as Trustee (hereinafter called the Vendee), under a Trust Agreement dated as of April 7, 1977 (hereinafter called the Trust Agreement), with Michigan National Bank, ITT Industrial Credit Company and The Fifth Third Leasing Company (hereinafter collectively called the Beneficiaries).

WHEREAS the Builder agrees to construct, sell and deliver to the Vendee, and the Vendee agrees to purchase, the railroad equipment described in Annex B hereto (hereinafter called the Equipment); and

WHEREAS the Vendee is entering into a lease dated as of the date hereof with MILLER BREWING COMPANY (hereinafter called the Initial Lessee) and SOUTHERN RAILWAY COMPANY (hereinafter called the Successor Lessee) in substantially the form annexed hereto as Annex C (hereinafter called the Lease), pursuant to which the Initial Lessee will remain as lessee under the Lease until the Succession Date (as defined in the Lease), whereupon the Successor Lessee shall become the lessee under the Lease and, except as otherwise specifically provided in the Lease, the Initial Lessee shall be discharged and released from all its obligations under the Lease (the term Lessee as used herein shall, until such Succession Date, mean the Initial Lessee and shall thereafter mean the Successor Lessee); and

WHEREAS Mercantile-Safe Deposit and Trust Company (hereinafter sometimes called the Assignee or the Vendor) is acting as agent for certain investors pursuant to the Participation Agreement dated as of the date hereof (hereinafter called the Participation Agreement), among the Assignee, the Beneficiaries, the Initial Lessee, the Successor Lessee, the Vendee and such investors;

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements hereinafter set forth, the parties hereto do hereby agree as follows:

ARTICLE 1. Assignment; Definitions. The parties hereto contemplate that the Vendee will furnish that portion of the Purchase Price (as hereinafter defined) for the Equipment as is required under subparagraph (a) of the third paragraph of Article 4 hereof and that an amount equal to the balance of such Purchase Price shall be paid to the Builder by the Assignee pursuant to an Agreement and Assignment dated as of the date hereof between the Builder and the Assignee, as agent (such Agreement and Assignment being hereinafter called the Assignment).

The term "Vendor", whenever used in this Agreement, means, before any assignment of its rights hereunder, the party hereto which has manufactured the Equipment and any successor or successors for the time being to its manufacturing properties and business, and, after any such assignment, both any assignee or assignees for the time being of such particular assigned rights as regards such rights, and also any assignor as regards any rights hereunder that are retained or excluded from any assignment; and the term "Builder", whenever used in this Agreement, means, both before and after any such assignment, the party hereto which has manufactured the Equipment and any successor or successors for the time being to its manufacturing properties and business.

In case of such assignment, the Vendee will assign to the Vendor, as security for the payment and performance of all the Vendee's obligations hereunder, all right, title, and interest of the Vendee in and to the Lease, pursuant to an Assignment of Lease and Agreement in the form of Annex D hereto (hereinafter called the Lease Assignment), and the Initial Lessee and the Successor Lessee shall consent thereto pursuant to the respective Consents and Agreements in the forms attached to Annex D (hereinafter collectively called the Consents).

ARTICLE 2. Construction and Sale. Pursuant to this Agreement, the Builder shall construct the Equipment at its plant set forth in Annex B hereto, and will sell and deliver to the Vendee, and the Vendee will purchase from the Builder and accept delivery of and pay for (as hereinafter provided), the Equipment, each unit of which shall be constructed in accordance with the specifications referred to in Annex B hereto and in accordance with such modifications thereof as may be agreed upon in writing between the Builder, the Vendee, the Initial Lessee and the Successor Lessee (which specifications and modifications, if any, are here-

inafter called the Specifications). The design, quality and component parts of each unit of the Equipment shall conform, on the date of completion of manufacture thereof, to all Department of Transportation and Interstate Commerce Commission requirements and specifications and to all standards, if any, recommended by the Association of American Railroads reasonably interpreted as then being applicable to each such unit of Equipment, and each such unit (except to the extent, if any, referred to in Annex A hereto) will be new railroad equipment.

ARTICLE 3. Inspection and Delivery. The Builder will deliver the units of the Equipment to the Vendee at the place or places specified in Annex B hereto (or if Annex B does not specify a place or places, at the place or places designated from time to time by the Vendee), freight and storage charges, if any, prepaid and included in the Purchase Price (as hereinafter defined), in accordance with the delivery schedule set forth in Annex B hereto; provided, however, that delivery of any unit of the Equipment shall not be made until this Agreement and the Lease have been filed pursuant to Section 20c of the Interstate Commerce Act; and provided, further, that the Builder shall have no obligation to deliver any unit of Equipment hereunder (i) subsequent to the commencement of any proceedings specified in clauses (c) or (d) of Article 15 hereof or the occurrence of any event of default (as described in Article 15 hereof), or event which, with the lapse of time and/or demand, could constitute such an event of default or (ii) unless the Builder shall have been notified by the Assignee that the conditions contained in Paragraph 7 of the Participation Agreement have been met and the Builder shall have been notified by the Vendee that the conditions contained in Paragraph 8 of the Participation Agreement have been met or waived. The Builder agrees not to deliver any unit of Equipment hereunder following receipt of written notice from the Vendee or the Assignee (a) of the commencement of any such proceedings or the occurrence of any such event, as aforesaid, or (b) that any of the conditions contained in Paragraph 7 or 8 of the Participation Agreement have not been met or waived.

Any Equipment not delivered at the time of receipt by the Builder of the notice specified in the second sentence of the first paragraph of this Article 3 and any Equipment not delivered and accepted hereunder on or prior to October 1, 1977, shall be excluded from this Agreement, and the Vendee shall be relieved of its obligation to purchase and pay for

such Equipment. If any Equipment shall be excluded herefrom pursuant to the immediately preceding sentence, the parties hereto shall execute an agreement supplemental hereto limiting this Agreement to the Equipment not so excluded herefrom. Pursuant to the Participation Agreement the Successor Lessee has agreed to purchase such excluded Equipment and any Equipment excluded from this Agreement pursuant to the first paragraph of Article 4 hereof from the Builder as provided in Paragraph 1 of the Participation Agreement.

The Builder's obligation as to the time of delivery set forth in Schedule B is subject, however, to delays resulting from causes beyond the Builder's reasonable control, including but not limited to acts of God, acts of government such as embargoes, priorities and allocations, war or war conditions, riot or civil commotion, sabotage, strikes, differences with workmen, accidents, fire, flood, explosion, damage to plant, equipment or facilities, delays in receiving necessary materials or delays of carriers or subcontractors.

During construction, the Equipment shall be subject to inspection and approval by the authorized inspectors of the Vendee (who may be employees of the Successor Lessee), and the Builder shall grant to such authorized inspectors reasonable access to its plant. The Builder agrees to inspect the materials used in the construction of the Equipment in accordance with the standard quality control practices of the Builder. Upon completion of each unit or a number of units of the Equipment, such unit or units shall be presented to an inspector of the Vendee for inspection at the place specified for delivery of such unit or units, and if each such unit conforms to the Specifications, requirements and standards applicable thereto, such inspector or an authorized representative of the Vendee (who may be an employee of the Successor Lessee) shall execute and deliver to the Builder a certificate of acceptance (hereinafter called the Certificate of Acceptance), stating that such unit or units have been inspected and accepted on behalf of the Vendee and are marked in accordance with Article 9 hereof; provided, however, that the Builder shall not thereby be relieved of its warranty referred to in Article 13 hereof.

On delivery and acceptance of each such unit hereunder at the place specified for delivery, the Builder shall have no further responsibility for, nor bear any risk of, any damage to or the destruction or loss of such unit; provided, however, that the Builder shall not thereby be relieved of



its warranty referred to in Article 13 hereof.

Notwithstanding the foregoing or any other provision of this Agreement to the contrary, the delivery to and acceptance by or on behalf of the Vendee of any unit of Equipment excluded from this Agreement pursuant to the first paragraph of Article 4 hereof shall be ineffective, ab initio, to create in or transfer to the Vendee any legal or beneficial right or interest in such unit or (except as provided in the first paragraph of Article 4 hereof) to impose on the Vendee any liability, obligation or responsibility with respect thereto; any right or interest in any such unit created in or transferred to or purported to be created in or transferred to, the Vendee shall be held by the Vendee solely as trustee for the benefit of the Successor Lessee.

ARTICLE 4. Purchase Price and Payment. The base price or prices per unit of the Equipment are set forth in Annex B hereto. Such base price or prices are subject to such increase or decrease as is agreed to by the Builder, the Vendee, the Initial Lessee and the Successor Lessee. The term "Purchase Price" as used herein shall mean the base price or prices as so increased or decreased as set forth in the Builder's invoice or invoices delivered to the Vendee and, if the Purchase Price is other than the base price or prices set forth in Annex B, the invoice or invoices shall be accompanied by, or have endorsed thereon, the agreement or approval of the Initial Lessee and the Successor Lessee and the Vendee (such invoice or invoices being hereinafter called the Invoices). If on any Closing Date (as hereinafter defined in this Article) the aggregate Purchase Price of Equipment for which settlement has theretofore been and is then being made under this Agreement would, but for the provisions of this sentence, exceed the Maximum Purchase Price specified in Item 5 of Annex A hereto (or such higher amount as the Vendee may at its option agree to prior to delivery of any unit or units of Equipment that, but for such agreement, would be excluded from this Agreement), the Builder (and any assignee of the Builder) and the Vendee will enter into an agreement excluding from this Agreement such unit or units of Equipment then proposed to be settled for and specified by the Vendee, as will, after giving effect to such exclusion, reduce such aggregate Purchase Price under this Agreement to not more than the Maximum Purchase Price specified in Item 5 of Annex A hereto (or such higher amount as aforesaid) and the Vendee shall take such other steps, including the execution of instruments of transfer, as it

may be reasonably requested by the Lessee for the purpose of acknowledging and perfecting the interest of the Lessee in any unit of Equipment so excluded from this Agreement, and the Vendee shall have no further obligation or liability in respect of units so excluded.

The Equipment shall be settled for in such number of groups of units of the Equipment delivered to and accepted by the Vendee as is provided in Item 2 of Annex A hereto (each such group being hereinafter called a Group). The term "Closing Date" with respect to any Group shall mean such date or dates (not earlier than July 15, 1977, and not later than October 1, 1977, such later date being herein called the Cut-Off Date), occurring not more than five business days following presentation by the Builder to the Vendee of the Invoices and of the Certificate or Certificates of Acceptance for the Equipment and written notice thereof by the Builder to the Initial Lessee, as shall be fixed by the Builder by written notice delivered to the Vendee and the Assignee at least four business days prior to the Closing Date designated therein. The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and any other day on which banking institutions in New York, New York, or Baltimore, Maryland, are authorized or obligated to remain closed.

The Vendee hereby acknowledges itself to be indebted to the Vendor in the amount of, and hereby promises to pay in cash to the Vendor at such place as the Vendor may designate, the Purchase Price of the Equipment, as follows:

(a) not later than 1:00 p.m., Washington, D. C. time, on the Closing Date with respect to each Group (i) an amount equal to 35.969892% of the aggregate Purchase Price of such Group plus (ii) the amount, if any, by which (x) 64.030108% of the Purchase Price of all units of the Equipment covered by this Agreement for which settlement has theretofore and is then being made, as set forth in the Invoice or Invoices therefor (said invoiced prices being herein called the Invoiced Purchase Prices), exceeds (y) the Maximum Conditional Sale Indebtedness specified in Item 6 of Annex A and any amount or amounts previously paid or payable with respect to the Invoiced Purchase Prices pursuant to this clause (ii); and

(b) in 36 semiannual instalments, as hereinafter

provided, an amount equal to the aggregate Purchase Price of the units of Equipment for which settlement is then being made, less the aggregate amount paid or payable with respect thereto pursuant to subparagraph (a) of this paragraph.

The portion of the Purchase Price payable pursuant to subparagraph (b) of the preceding paragraph (herein called the Conditional Sale Indebtedness) shall be payable on each April 1 and October 1, commencing April 1, 1978, to and including October 1, 1995 (or if any such date is not a business day, on the next succeeding business day), each such date being hereinafter called a Payment Date. The unpaid balance of the Conditional Sale Indebtedness shall bear interest from the Closing Date in respect of which such indebtedness was incurred at the rate of 8-1/4% per annum. Such interest shall be payable, to the extent accrued, on October 1, 1977, and on each Payment Date thereafter. The instalments of principal payable on each Payment Date shall be calculated so that the amount and allocation of principal and interest payable on each Payment Date shall be substantially in proportion to the amount and allocation of principal and interest on such Payment Date set forth in Schedules I through IV hereto, the first 6 of such instalments of principal will amortize 12.282462% of the Conditional Sale Indebtedness, the next 14 of such instalments of principal will amortize 34.150270% of the Conditional Sale Indebtedness, the next 7 of such instalments of principal will amortize 35.093063% of the Conditional Sale Indebtedness and the remaining 9 instalments of principal will completely amortize the remaining Conditional Sale Indebtedness. The Vendee will furnish to the Vendor and the Initial Lessee and the Successor Lessee promptly after each Closing Date a schedule, in such number of counterparts as shall be requested by the Vendor, showing the respective amounts of principal and interest payable on each Payment Date.

Interest under this Agreement shall be determined on the basis of a 360-day year of twelve 30-day months.

The Vendee will pay, to the extent legally enforceable, interest upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof at the rate of 9-1/4% per annum.

All payments provided for in this Agreement shall be made in such coin or currency of the United States of

America as at the time of payment shall be legal tender for the payment of public and private debts. Except as provided in Article 7 hereof, the Vendee shall not have the privilege of prepaying any portion of the Conditional Sale Indebtedness prior to the date it becomes due.

The obligation of the Vendee to pay to the Vendor the amount required to be paid pursuant to subparagraph (a) of the third paragraph of this Article 4 with respect to any Group shall be subject to the receipt by the Vendee of copies of the documents required to be furnished by the Builder pursuant to Section 4 of the Assignment in respect of such Group.

Notwithstanding any other provision of this Agreement (including, but not limited to, any provision of Articles 15 and 16 hereof) but not limiting the effect of Article 21 hereof, it is understood and agreed by the Vendor that the liability of the Vendee or any assignee of the Vendee for all payments to be made by it under and pursuant to this Agreement, including any liability arising out of or in connection with its representations in the Participation Agreement, except for its representations in subparagraphs (a), (b), (c) (other than any representation as to the enforceability of any Agreement) and the first sentence of (d) of Paragraph 5 thereof, or the performance of its obligations hereunder and excluding only the obligations set forth in the proviso in the third paragraph of Article 12 hereof and the payments to be made pursuant to subparagraph (a) of the third paragraph of this Article, shall not exceed an amount equal to, and shall be payable only out of, the "income and proceeds from the Equipment". As used herein the term "income and proceeds from the Equipment" shall mean (i) if one of the events of default specified in Article 15 hereof shall have occurred and while it shall be continuing, so much of the following amounts as are indefeasibly received by the Vendee or any assignee of the Vendee at any time after any such event and during the continuance thereof: (a) all amounts of rental and amounts in respect of Casualty Occurrences (as defined in Article 7 hereof) paid for or with respect to the Equipment pursuant to the Lease and any and all other payments received under § 10 or any other provision of the Lease and (b) any and all payments or proceeds received for or with respect to the Equipment as the result of the sale, lease or other disposition thereof, after deducting all costs and expenses of such sale, lease or other disposition, and (ii) at any other time only that portion of the amounts referred to

in the foregoing clauses (a) and (b) as are indefeasibly received by the Vendee or any assignee of the Vendee and as shall equal the portion of the Conditional Sale Indebtedness (including prepayments thereof required in respect of Casualty Occurrences) and/or interest thereon due and payable on the date such amounts were required to be paid pursuant to the Lease or as shall equal any other payments then due and payable under this Agreement; it being understood that "income and proceeds from the Equipment" shall in no event include amounts referred to in the foregoing clauses (a) and (b) received by the Vendee or any assignee of the Vendee prior to the existence of such an event of default which exceeded the amounts required to discharge that portion of the Conditional Sale Indebtedness (including prepayments thereof required in respect of Casualty Occurrences) and/or interest thereon due and payable on the date on which amounts with respect thereto received by the Vendee or any assignee of the Vendee were required to be paid to it pursuant to the Lease or which exceeded any other payments due and payable under this Agreement at the time such amounts were payable under the Lease. Notwithstanding anything to the contrary contained in Article 15 or 16 hereof, the Vendor agrees that in the event it shall obtain a judgment against the Vendee for an amount in excess of the amounts payable by the Vendee pursuant to the limitations set forth in this paragraph, it will limit its execution of such judgment to amounts payable pursuant to the limitations set forth in this paragraph. Nothing contained herein limiting the liability of the Vendee shall derogate from the right of the Vendor to proceed against the Equipment for the full unpaid Purchase Price of the Equipment and interest thereon and all other payments and obligations hereunder.

ARTICLE 5. Security Interest in the Equipment.

The Vendor shall and hereby does retain a security interest in the Equipment until the Vendee shall have made all its payments under this Agreement and shall have kept and performed all its agreements herein contained, notwithstanding any provision of this Agreement limiting the liability of the Vendee and notwithstanding the delivery of the Equipment to and the possession and use thereof by the Vendee and the Lessee as provided in this Agreement and the Lease.

Except as otherwise specifically provided in Article 7 hereof, when and only when the Vendor shall have been paid the full indebtedness in respect of the Purchase Price of the Equipment, together with interest and all other pay-

ments as herein provided, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendee without further transfer or action on the part of the Vendor. However, the Vendor, if so requested by the Vendee at that time, will (a) execute a bill or bills of sale for the Equipment releasing its security interest therein to the Vendee or upon its order, free of all liens, security interests and other encumbrances created or retained hereby and deliver such bill or bills of sale to the Vendee at its address referred to in Article 20 hereof, (b) execute and deliver at the same place, for filing, recording or depositing in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of the Vendee to the Equipment and (c) pay to the Vendee any money paid to the Vendor pursuant to Article 7 hereof and not theretofore applied as therein provided. The Vendee hereby waives and releases any and all rights, existing or that may be acquired, in or to the payment of any penalty, forfeit or damages for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file such certificate within a reasonable time after written demand by the Vendee.

ARTICLE 6. Taxes. All payments to be made by the Vendee hereunder will be free of expense to the Vendor for collection or other charges and will be free of expense to the Vendor with respect to the amount of any local, state, federal or foreign taxes (other than gross receipts taxes [except gross receipt taxes in the nature of or in lieu of sales or use or rental taxes], taxes measured by net income, excess profits taxes and similar taxes) or license fees, assessments, charges, fines or penalties hereafter levied or imposed upon or in connection with or measured by this Agreement or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called impositions), all of which such impositions the Vendee assumes and agrees to pay on demand in addition to the Purchase Price of the Equipment. The Vendee will also pay promptly all impositions which may be imposed upon the Equipment delivered to it or for the use or operation thereof or upon the earnings arising

therefrom (except as provided above) or upon the Vendor solely by reason of its ownership thereof (except as provided above) and will keep at all times all and every part of the Equipment free and clear of all impositions which might in any way affect the security interest of the Vendor or result in a lien upon any part of the Equipment; provided, however, that the Vendee shall be under no obligation to pay any impositions of any kind so long as it is contesting in good faith and by appropriate legal or administrative proceedings such impositions and the nonpayment thereof does not, in the reasonable opinion of the Vendor, adversely affect the security interest or property or rights of the Vendor in or to the Equipment or otherwise under this Agreement. If any impositions shall have been charged or levied against the Vendor directly and paid by the Vendor, the Vendee shall reimburse the Vendor upon presentation of an invoice therefor, and any amounts so paid by the Vendor shall be secured by and under this Agreement; provided, however, that the Vendee shall not be obligated to reimburse the Vendor for any impositions so paid unless the Vendor shall have been legally liable with respect thereto (as evidenced by an opinion of counsel for the Vendor) or unless the Vendee shall have approved in writing the payment thereof.

ARTICLE 7. Maintenance; Casualty Occurrences. The Vendee shall, at its own cost and expense, maintain and keep each unit of the Equipment in good operating order, repair and condition.

In the event that any unit of the Equipment shall be or become worn out, lost, stolen, destroyed, or, in the opinion of the Vendee or the Lessee, irreparably damaged, from any cause whatsoever, or taken or requisitioned by condemnation or otherwise resulting in loss of possession by the Lessee for a period of 90 consecutive days, except requisition for use by the United States Government (such occurrences being herein called Casualty Occurrences), the Vendee shall, promptly after it shall have determined that such unit has suffered a Casualty Occurrence cause the Vendor to be fully informed in regard thereto. On the next succeeding date for the payment of interest on the Conditional Sale Indebtedness (hereinafter called a Casualty Payment Date), the Vendee shall pay to the Vendor a sum equal to the Casualty Value (as hereinafter defined in this Article) of such unit suffering a Casualty Occurrence as of the date of such payment and shall file, or cause to be filed, with the Vendor a certificate setting forth the Casualty Value

of such unit. Any money paid to the Vendor pursuant to this paragraph shall be applied (after the payment of the interest and principal due on such date) to prepay without penalty or premium, ratably in accordance with the unpaid balance of each instalment, the Conditional Sale Indebtedness, and the Vendee will promptly furnish to the Vendor and the Lessee a revised schedule of payments of principal and interest thereafter to be made, in such number of counterparts as the Assignee may request. In the event of the requisition for use by the United States Government of any unit of the Equipment, all of the Vendee's obligations hereunder with respect to such unit shall continue to the same extent as if such requisition had not occurred.

Upon payment by the Vendee to the Vendor of the Casualty Value of any unit of the Equipment having suffered a Casualty Occurrence, absolute right to the possession of, title to and property in such unit shall pass to and vest in the Vendee, without further transfer or action on the part of the Vendor, except that the Vendor, if requested by the Vendee, will execute and deliver to the Vendee, at the expense of the Vendee, an appropriate instrument confirming such passage to the Vendee of all the Vendor's right, title and interest, and the release of the Vendor's security interest, in such unit, in recordable form, in order that the Vendee may make clear upon the public records the title of the Vendee to such unit.

The Casualty Value of each unit of the Equipment suffering a Casualty Occurrence shall be deemed to be that portion of the original Purchase Price thereof remaining unpaid on the date as of which such Casualty Value shall be determined (without giving effect to any prepayment or prepayments theretofore made under this Article with respect to any other unit), plus interest accrued thereon but unpaid as of such date. For the purpose of this paragraph, each payment of the Purchase Price in respect of Equipment made pursuant to Article 4 hereof shall be deemed to be a payment on each unit of the Equipment in like proportion as the original Purchase Price of such unit bears to the aggregate original Purchase Price of the Equipment.

If the Vendor shall receive any insurance proceeds or condemnation payments in respect of such units suffering a Casualty Occurrence, the Vendor shall, subject to the Vendor having received payment of the Casualty Value hereunder, pay such insurance proceeds or condemnation payments



to the Vendee. All insurance proceeds or condemnation payments received by the Vendor in respect of any unit or units of Equipment not suffering a Casualty Occurrence shall be paid to the Vendee upon proof satisfactory to the Vendor that any damage to such unit in respect of which such proceeds were paid has been fully repaired.

ARTICLE 8. Reports and Inspections. On or before April 30 in each year, commencing with the year 1978, and on the Succession Date (as defined in the Lease) the Vendee shall cause to be furnished to the Vendor an accurate statement (a) setting forth as at the preceding December 31 the amount, description and numbers of all units of the Equipment then subject to this Agreement, the amount, description and numbers of all units of the Equipment that have suffered a Casualty Occurrence during the preceding calendar year or are then undergoing repairs (other than running repairs) or then withdrawn from use pending such repairs (other than running repairs) and setting forth such other information regarding the condition and state of repair of the Equipment as the Vendor may reasonably request and (b) stating that, in the case of all Equipment repaired or repainted during the period covered by such statement, the numbers and markings required by Article 9 hereof have been preserved or replaced. The Vendor shall have the right, by its agents, to inspect the Equipment and the Lessee's records with respect thereto at such reasonable times as the Vendor may request during the term of this Agreement.

ARTICLE 9. Marking of Equipment. The Vendee will cause each unit of the Equipment to be kept numbered with the road number of the Successor Lessee as set forth in Annex B hereto, or, in the case of Equipment not there listed, such road number as shall be set forth in any amendment or supplement hereto extending this Agreement to cover such Equipment, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each unit, in letters not less than one-half inch in height, the words "Ownership subject to a Security Agreement filed under the Interstate Commerce Act, Section 20c", "Owned by a Bank or Trust Company under a Security Agreement Filed under the Interstate Commerce Act, Section 20c" or other appropriate words designated by the Vendor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Vendor's interest in the Equipment and its rights under this Agreement. The Vendee will not permit any such unit to be placed in opera-

tion or exercise any control or dominion over the same until such markings shall have been made thereon and will replace or will cause to be replaced promptly any such markings which may be removed, obliterated, defaced or destroyed. The Vendee will not permit the identifying number of any unit of the Equipment to be changed except in accordance with a statement of new number or numbers to be substituted therefor, which statement previously shall have been filed with the Vendor and filed, recorded and deposited by the Vendee in all public offices where this Agreement shall have been filed, recorded and deposited.

Except as provided in the immediately preceding paragraph, the Vendee will not allow the name of any person, association or corporation to be placed on any unit of the Equipment as a designation that might be interpreted as a claim of ownership; provided, however, that the Equipment may be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates.

ARTICLE 10. Compliance with Laws and Rules. During the term of this Agreement, the Vendee will comply, and will cause every lessee or user of the Equipment to comply, in all respects (including, without limitation, with respect to the use, maintenance and operation of the Equipment) with all laws of the jurisdictions in which its or such lessee's or user's operations involving the Equipment may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, to the extent that such laws and rules affect the title, operation or use of the Equipment, and in the event that such laws or rules require any alteration, replacement or modification of or to any part of any unit of the Equipment, the Vendee will conform therewith at its own expense; provided, however, that the Vendee or the Lessee may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the reasonable opinion of the Vendor, adversely affect the property or rights of the Vendor under this Agreement.

ARTICLE 11. Possession and Use. The Vendee, so long as an event of default shall not have occurred and be continuing under this Agreement, shall be entitled, from and after delivery of the Equipment by the Builder to the Vendee,

to the possession of the Equipment and the use thereof, but only upon and subject to all the terms and conditions of this Agreement.

The parties hereto acknowledge that the Vendee simultaneously is leasing the Equipment to the Lessee as provided in the Lease, and the rights of the Lessee and its permitted assigns under the Lease shall be subordinated and junior in rank to the rights, and shall be subject to the remedies, of the Vendor under this Agreement. The Lease shall not be amended or terminated (except in accordance with its terms) without the prior written consent of the Vendor.

ARTICLE 12. Prohibition Against Liens. The Vendee will pay or discharge any and all sums claimed by any party from, through or under the Vendee or its successors or assigns which, if unpaid, might become a lien, charge or security interest on or with respect to the Equipment, or any unit thereof, or the Vendee's interests in the Lease and the payments to be made thereunder equal or superior to the Vendor's security interest therein, and will promptly discharge any such lien, charge or security interest which arises, but shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal or administrative proceedings in any reasonable manner and the nonpayment thereof does not, in the reasonable opinion of the Vendor, adversely affect the security interest of the Vendor in or to the Equipment or otherwise under this Agreement. Any amounts paid by the Vendor in discharge of liens, charges or security interests upon the Equipment shall be secured by and under this Agreement.

This covenant will not be deemed breached by reason of liens for taxes, assessments or governmental charges or levies, in each case not due and delinquent, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent.

The foregoing provisions of this Article 12 shall be subject to the limitations set forth in the last paragraph of Article 4 hereof and the provisions of Article 21 hereof; provided, however, that, subject always to Paragraph 19 of the Participation Agreement, the Vendee will pay or discharge any and all claims, liens, charges or security interests claimed by any party from, through or under the Vendee or its successors or assigns, not arising out of the transac-

tions contemplated hereby (but including tax liens arising out of the receipt of the income and proceeds from the Equipment), equal or superior to the Vendor's security interest therein, which, if unpaid, might become a lien, charge or security interest on or with respect to the Equipment, or any unit thereof, or the Vendee's interest in the Lease and the payments to be made thereunder, but the Vendee shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal or administrative proceedings in any reasonable manner and the nonpayment thereof does not, in the reasonable opinion of the Vendor, adversely affect the security interest of the Vendor in or to the Equipment or otherwise under this Agreement or in and to the Lease and the payments to be made thereunder.

ARTICLE 13. Indemnities and Warranties. The Vendee agrees to indemnify, protect and hold harmless the Vendor from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including but not limited to counsel fees and expenses, penalties and interest, arising out of or as the result of the entering into or the performance of this Agreement, the retention by the Vendor of title to or a security interest in the Equipment, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any of the Equipment, any accident, in connection with the operation, use, condition, possession, storage or return of any of the Equipment resulting in damage to property or injury or death to any person during the period when title thereto remains in the Vendor or the transfer of title to the Equipment by the Vendor pursuant to any of the provisions of this Agreement, except however, in the case of the Builder, any losses, damages, injuries, liabilities, claims and demands whatsoever arising out of any tort, breach of warranty or failure to perform any covenant hereunder by the Builder. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of the indebtedness in respect of the Purchase Price of, and the release of the security interest in, the Equipment, as provided in Article 5 hereof, or the termination of this Agreement in any manner whatsoever.

The Vendee will bear the responsibility for and risk of, and shall not be released from its obligations hereunder (except as provided in Article 21 hereof) in the

event of, any damage to or the destruction or loss of any unit of or all the Equipment.

The Builder represents and warrants to the Vendee that, at the time of delivery and acceptance of each unit of the Equipment under this Agreement, the Vendee will have good and marketable title to such unit, free and clear of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Vendor under this Agreement and the rights of the Lessee under the Lease.

The Builder represents that it is not entering into this Agreement, or entering into any assignment of this Agreement, directly or indirectly in connection with any arrangement or understanding in any way involving any employee benefit plan (other than a governmental plan) with respect to which it is a party in interest, all within the meaning of the Employee Retirement Income Security Act of 1974.

The agreement of the parties relating to the Builder's warranty of material and workmanship and the agreement of the parties relating to patent indemnification are set forth in Items 3 and 4 of Annex A hereto.

ARTICLE 14. Assignments. The Vendee will not (a) except as provided in Article 11 hereof, transfer the right to possession of any unit of the Equipment or (b) sell, assign, transfer or otherwise dispose of its rights under this Agreement without the prior written consent of the Vendor unless such sale, assignment, transfer or disposition is made expressly subject in all respects to the rights and remedies of the Vendor hereunder (including, without limitation, rights and remedies against the Vendee and the Lessee) to a bank or trust company organized under the laws of Connecticut, New York or the United States and having its principal office in either the State of Connecticut or the State of New York, having a combined capital and surplus of not less than \$50,000,000 that is appointed pursuant to Article VII of the Trust Agreement, and such bank or trust company expressly assumes, in writing, in form satisfactory to the Vendor, all the obligations of the Vendee hereunder.

All or any of the rights, benefits and advantages of the Vendor under this Agreement, including the right to receive the payments herein provided to be made by the Vendee, may be assigned by the Vendor and reassigned by any assignee at any time or from time to time. No such

assignment shall subject any assignee to, or relieve the Builder from, any of the obligations of the Builder to construct and deliver the Equipment in accordance herewith or to respond to its warranties and indemnities referred to in Article 13 hereof, or relieve the Vendee of its obligations to the Builder contained in Articles 2, 3, 4, 6 and 13 hereof, Annex A hereto and this Article 14, or any other obligation which, according to its terms or context, is intended to survive an assignment.

Upon any such assignment, either the assignor or the assignee shall give written notice to the Vendee and the Lessee, together with a counterpart or copy of such assignment, stating the identity and post office address of the assignee, and such assignee shall, by virtue of such assignment, acquire all the assignor's right, title and interest in and to the Equipment and this Agreement, or in and to a portion thereof, as the case may be, subject only to such reservations as may be contained in such assignment. From and after the receipt by the Vendee of the notification of any such assignment, all payments thereafter to be made by the Vendee under this Agreement shall, to the extent so assigned, be made to the assignee in such manner as it may direct.

The Vendee recognizes that this Agreement will be assigned to the Assignee as provided in the Assignment. The Vendee expressly represents, for the purpose of assurance to any person, firm or corporation considering the acquisition of this Agreement or of all or any of the rights of the Vendor hereunder, and for the purpose of inducing such acquisition, that the rights of the Assignee to the entire unpaid indebtedness in respect of the Purchase Price of the Equipment or such part thereof as may be assigned together with interest thereon, as well as any other rights hereunder which may be so assigned, shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever arising out of any breach of any obligation of the Builder with respect to the Equipment or the manufacture, construction, delivery or warranty thereof, or with respect to any indemnity herein contained, nor subject to any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Vendee or the Lessee by the Builder. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Vendee or the Lessee, as the case may be, against and only against the Builder.

ARTICLE 15. Defaults. In the event that any one or more of the following events of default shall occur and be continuing, to wit:

(a) the Vendee shall fail to pay in full any sum payable by the Vendee when payment thereof shall be due hereunder (irrespective of the provisions of Article 4 or 21 hereof or any other provision of this Agreement limiting the liability of the Vendee) and such default shall continue for ten business days after the date such payment is due and payable; or

(b) the Vendee (irrespective of the provisions of Article 4 or 21 hereof or any other provision of this Agreement limiting the liability of the Vendee) or the Lessee shall, for more than 30 days after the Vendor shall have demanded in writing performance thereof, fail or refuse to comply with any other covenant, agreement, term or provision of this Agreement, or of any agreement entered into concurrently herewith relating to the financing of the Equipment, on its part to be kept and performed or to make provision satisfactory to the Vendor for such compliance; or

(c) a petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may be hereafter amended, shall be filed by or against the Successor Lessee and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Successor Lessee under the Lease and the Consent shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed (whether or not subject to ratification) in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees, within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier; or

(d) any other proceeding shall be commenced by or against the Vendee, the Initial Lessee, the Successor Lessee or Philip Morris Incorporated (hereinafter called the Guarantor) for any relief which includes, or might

result in, any modification of the obligations of the Vendee hereunder or of either the Initial Lessee or the Successor Lessee under the Lease or such Lessee's Consent or of the Guarantor under the Guaranty Agreement (hereinafter called the Guaranty Agreement) in the form attached as Exhibit C to the Participation Agreement under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustment of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of such obligations), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Vendee under this Agreement or of either the Initial Lessee or the Successor Lessee under the Lease and such Lessee's Consent or of the Guarantor under the Guaranty Agreement, as the case may be, shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Vendee, the Initial Lessee, the Successor Lessee or the Guarantor, as the case may be, or for their respective property in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier; provided, however, that none of the events listed in this subparagraph (d) with respect to the Initial Lessee or the Guarantor shall be an event of default hereunder after the Succession Date referred to in the second recital clause of this agreement; or

(e) the Vendee shall make or permit any unauthorized assignment or transfer of this Agreement or any interest herein or any unauthorized transfer of the right to possession of any unit of the Equipment and the Vendee shall, for more than 30 days after demand in writing by the Vendor, fail to secure a reassignment or retransfer to the Vendee of such Agreement, interest or right; or

(f) an Event of Default shall have occurred under



the Lease,

then at any time after the occurrence of such an event of default the Vendor may, upon written notice to the Vendee, the Beneficiaries and the Lessee and upon compliance with any legal requirements then in force and applicable to such action by the Vendor, (i) cause the Lease immediately upon such notice to terminate (and the Vendee acknowledges the right of the Vendor to terminate the Lease), but without affecting the indemnities which by the provisions of the Lease survive its termination, provided, however, that such termination shall not be in derogation of or impair the rights of the Vendee to enforce compliance by the Lessee with any of its covenants and agreements under the Lease or to enforce any of its rights and remedies under Section 10 of the Lease (subject to the Vendor's rights to repossess and sell the Equipment as provided herein), including the rights of the Vendee to sue for and recover damages provided for in Section 11(a) of the Lease upon the occurrence of an Event of Default under the Lease, and/or (ii) declare (hereinafter called a Declaration of Default) the entire unpaid Conditional Sale Indebtedness, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such indebtedness and interest shall bear interest from the date of such Declaration of Default at the rate per annum specified in Article 4 hereof as being applicable to amounts remaining unpaid after becoming due and payable, to the extent legally enforceable. Upon a Declaration of Default, subject to Article 4 hereof, the Vendor shall be entitled to recover judgment for the entire unpaid balance of the Conditional Sale Indebtedness so payable, with interest as aforesaid, and to collect such judgment out of any property of the Vendee, subject to the provisions of Articles 4 and 21 hereof, wherever situated. The Vendee shall promptly notify the Vendor of any event which has come to its attention which constitutes, or with the giving of notice and/or lapse of time could constitute, an event of default under this Agreement.

The Vendor may, at its election, waive any such event of default and its consequences and rescind and annul any Declaration of Default or notice of termination of the Lease by notice to the Vendee and the Lessee in writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if no such event of default had occurred and no Declaration of Default or notice

of termination of the Lease had been made or given. Notwithstanding the provisions of this paragraph, it is expressly understood and agreed by the Vendee that time is of the essence of this Agreement and that no such waiver, rescission or annulment shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

Anything in this Agreement to the contrary notwithstanding, in the case of any event of default occurring hereunder due to the occurrence of an Event of Default under the Lease, the Vendor shall not, without the prior written consent of each Beneficiary, exercise any remedy or remedies provided herein or in the Lease in respect thereof during a thirty-day period next following the giving of written notice to the Beneficiaries constituting a declaration of default as above provided. During such thirty-day period, the Vendee and/or any Beneficiary or Beneficiaries shall have the right to cure, on behalf of the Lessee, such Event of Default under the Lease. Such right to cure may be exercised by one or more of said parties any number of times throughout the term of the Lease whether or not the Lessee shall at any time repay any amounts so advanced in order to cure one or more such defaults, and each such separate Event of Default occurring subsequent to an Event of Default which was theretofore cured by one or more such parties shall be subject to the notice requirement and the thirty-day period during which the Vendor may not exercise his remedies as hereinabove provided. No party exercising any right to cure or any such right to cure shall obtain any lien, charge or encumbrance of any kind upon the Equipment or any rentals or other amounts payable therefor under the Lease in respect of any sums paid in connection with the exercise of such right or the curing of such Event of Default, nor shall any claims of such party against the Lessee for the repayment of such sums so advanced impair the prior right of the Vendor to the sums payable by the Lessee under the Lease; provided, however, that if no event of default hereunder shall then have occurred and be continuing and if all payments of Conditional Sale Indebtedness and interest thereon then due and owing shall have been made at the time of receipt by the Vendor from the Lessee of an overdue instalment of rental or other sum under the Lease in respect of which the Vendee or any Beneficiary shall have made payment to the Vendor pursuant to this paragraph and/or any interest payable by the Lessee in respect of the late payment thereof, such instalment or other sum and interest thereon shall be released to or at the written direction of the Vendee.

ARTICLE 16. Remedies. At any time during the continuance of a Declaration of Default, the Vendor may, and upon such further notice, if any, as may be required for compliance with any mandatory legal requirements then in force and applicable to the action to be taken by the Vendor, take or cause to be taken, by its agent or agents, immediate possession of the Equipment, or one or more of the units thereof, without liability to return to the Vendee any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 16 expressly provided, and may remove the same from possession and use of the Vendee or any other person and for such purpose may enter upon the premises of the Vendee or any other premises where the Equipment may be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Vendee, subject to all mandatory requirements of due process of law.

In case the Vendor shall demand possession of the Equipment pursuant to this Agreement and shall designate a reasonable point or points for the delivery of the Equipment to the Vendor, the Vendee shall, at its own expense and risk:

(a) forthwith and in the usual manner (including, but not by way of limitation, causing prompt telegraphic and written notice to be given to the Association of American Railroads and all railroads to which any unit or units of the Equipment have been interchanged to return the unit or units so interchanged) cause the Equipment to be placed upon such storage tracks of the Lessee (or, in the case of the Initial Lessee, on the tracks of the sublessee of the Initial Lessee) as the Vendor reasonably may designate;

(b) permit the Vendor to store the Equipment on such tracks at the risk of the Vendee without charge for rent or storage until the Equipment has been sold, leased or otherwise disposed of by the Vendor; and

(c) cause the Equipment to be transported to any reasonable place on the lines of railroad operated by the Lessee (or, in the case of the Initial Lessee, operated by its sublessee) or any of its affiliates or to any connecting carrier for shipment, all as directed by the Vendor.

During any storage period, the Vendee will, at its own cost

and expense, insure, maintain and keep each such unit in good order and repair and will permit the inspection of the Equipment by the Vendor, the Vendor's representatives and prospective purchasers, lessees and users. This agreement to deliver the Equipment and furnish facilities as hereinbefore provided is of the essence of the agreement between the parties, and, upon application to any court of equity having jurisdiction in the premises, the Vendor shall be entitled to a decree against the Vendee requiring specific performance hereof. The Vendee hereby expressly waives any and all claims against the Vendor and its agent or agents for damages of whatever nature in connection with any retaking of any unit of the Equipment in any reasonable manner.

At any time during the continuance of a Declaration of Default, the Vendor (after retaking possession of the Equipment as hereinbefore in this Article 16 provided) may, at its election and upon such notice as is hereinafter set forth, retain the Equipment in satisfaction of the entire Conditional Sale Indebtedness and make such disposition thereof as the Vendor shall deem fit. Written notice of the Vendor's election to retain the Equipment shall be given to the Vendee and the Lessee by telegram or registered mail, addressed as provided in Article 20 hereof, and to any other persons to whom the law may require notice, within 30 days after such Declaration of Default. In the event that the Vendor should elect to retain the Equipment and no objection is made thereto within the 30-day period described in the second proviso below, all the Vendee's rights in the Equipment shall thereupon terminate and all payments made by the Vendee or for its account may be retained by the Vendor as compensation for the use of the Equipment; provided, however, that if the Vendee, before the expiration of the 30-day period described in the proviso below, should pay or cause to be paid to the Vendor the total unpaid balance of the Conditional Sale Indebtedness, together with interest thereon accrued and unpaid and all other payments due under this Agreement, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendee; provided, further, that if the Vendee, the Lessee or any other persons notified under the terms of this paragraph object in writing to the Vendor within 30 days from the receipt of notice of the Vendor's election to retain the Equipment, then the Vendor may not so retain the Equipment, but shall sell, lease or otherwise dispose of it or continue to hold it pending sale, lease or other disposition as hereinafter provided or as may otherwise be permitted by

law. If the Vendor shall not have given notice to retain as hereinabove provided or notice of intention to dispose of the Equipment in any other manner, it shall be deemed to have elected to sell the Equipment in accordance with the provisions of this Article 16.

At any time during the continuance of a Declaration of Default, the Vendor, with or without retaking possession thereof, at its election and upon reasonable notice to the Vendee, the Lessee and any other persons to whom the law may require notice of the time and place, may sell the Equipment, or one or more of the units thereof, free from any and all claims of the Vendee, the Lessee or any other party claiming from, through or under the Vendee or the Lessee, at law or in equity, at public or private sale and with or without advertisement as the Vendor may determine; provided, however, that if, prior to such sale and prior to the making of a contract for such sale, the Vendee should tender full payment of the total unpaid balance of the Conditional Sale Indebtedness, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking possession of, removing, storing, holding and preparing the Equipment for, and otherwise arranging for, the sale and the Vendor's reasonable attorneys' fees, then upon receipt of such payment, expenses and fees by the Vendor, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendee. The proceeds of such sale or other disposition, less the attorneys' fee and any other expenses incurred by the Vendor in retaking possession of, removing, storing, holding, preparing for sale and selling or otherwise disposing of the Equipment, shall be credited on the amount due to the Vendor under the provisions of this Agreement.

Any sale hereunder may be held or conducted at New York, New York, at such time or times as the Vendor may specify (unless the Vendor shall specify a different place or places, in which case the sale shall be held at such place or places as the Vendor may specify), in one lot and as an entirety or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Vendor may determine, so long as such sale shall be in a commercially reasonable manner. The Vendor, the Vendee or the Lessee may bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale. The Vendee and the Lessee shall be given written notice of such sale not less than ten days

prior thereto, by telegram or registered mail addressed as provided in Article 20 hereof. If such sale shall be a private sale (which shall be deemed to mean only a sale where an advertisement for bids has not been published in a newspaper of general circulation or a sale where less than 40 railroads have been solicited in writing to submit bids), it shall be subject to the rights of the Lessee and the Vendee to purchase or provide a purchaser, within ten days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. In the event that the Vendor shall be the purchaser of the Equipment, it shall not be accountable to the Vendee or the Lessee (except to the extent of surplus money received as hereinafter provided in this Article 16), and in payment of the purchase price therefor the Vendor shall be entitled to have credited on account thereof all or any part of sums due to the Vendor hereunder. From and after the date of any such sale, the Vendee shall pay to the Vendor an amount equal to the interest rate on the unpaid Conditional Sale Indebtedness with respect to any such unit which shall not have been assembled, as hereinabove provided, by the date of such sale for each day from the date of such sale to the date of delivery to the purchaser at such sale.

Each and every power and remedy hereby specifically given to the Vendor shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Vendor. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Vendor in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein. Any extension of time for payment hereunder or other indulgence duly granted to the Vendee or the Lessee shall not otherwise alter or affect the Vendor's rights or the Vendee's obligations hereunder. The Vendor's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the Vendee's obligations or the Vendor's rights hereunder with respect to any subsequent payments or default therein.

If, after applying all sums of money realized by

the Vendor under the remedies herein provided, there shall remain any amount due to it under the provisions of this Agreement, the Vendee shall pay the amount of such deficiency to the Vendor upon demand, together with interest thereon from the date of such demand to the date of payment at the rate per annum specified in Article 4 hereof as being applicable to amounts remaining unpaid after becoming due and payable, and, if the Vendee shall fail to pay such deficiency, the Vendor may bring suit therefor and shall, subject to the limitations of the last paragraph of Article 4 hereof, be entitled to recover a judgment therefor against the Vendee. If, after applying as aforesaid all sums realized by the Vendor, there shall remain a surplus in the possession of the Vendor, such surplus shall be paid to the Vendee.

The Vendee will pay all reasonable expenses, including attorneys' fees, incurred by the Vendor in enforcing its remedies under the terms of this Agreement. In the event that the Vendor shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Vendor may recover reasonable expenses, including reasonable attorneys' fees, and the amount thereof shall be included in such judgment.

The Vendor shall forbear exercising its rights to declare the unpaid indebtedness hereunder due and payable in accordance with the provisions of the first paragraph of Article 15 hereof and its remedies under this Article 16, if such rights and remedies arise out of an event of default pursuant to the first paragraph of Article 15 hereof caused by default by the Initial Lessee pursuant to the first paragraph of § 10 of the Lease (other than an event of default caused by a proceeding commenced by or against the Successor Lessee specified in subparagraph (d) of the first paragraph of Article 15 hereof) if, and so long as, all the conditions set forth in the last two paragraphs of § 10 of the Lease shall be duly and punctually complied with by the Successor Lessee.

The foregoing provisions of this Article 16 are subject in all respects to all mandatory legal requirements at the time in force and applicable thereto.

ARTICLE 17. Applicable State Laws. Any provision of this Agreement prohibited by any applicable law of any jurisdiction (which is not overridden by applicable federal

law) shall as to such jurisdiction be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any such applicable law may be waived, they are hereby waived by the Vendee to the full extent permitted by law, it being the intention of the parties hereto that this Agreement shall be deemed to be a conditional sale and enforced as such.

Except as otherwise provided in this Agreement, the Vendee, to the full extent permitted by law, hereby waives all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell or lease the Equipment, or any one or more units thereof, and any other requirements as to the time, place and terms of the sale or lease thereof, any other requirements with respect to the enforcement of the Vendor's rights under this Agreement and any and all rights of redemption.

ARTICLE 18. Recording. The Vendee will cause this Agreement, any assignments hereof and any amendments or supplements hereto or thereto to be filed and recorded in accordance with Section 20c of the Interstate Commerce Act; and the Vendee will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, deposit and record any and all further instruments required by law or reasonably requested by the Vendor for the purpose of proper protection, to the satisfaction of counsel for the Vendor, of its interest in the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement; and the Vendee will promptly furnish or cause to be furnished to the Vendor certificates or other evidence of such filing, registering, depositing and recording satisfactory to the Vendor.

ARTICLE 19. Article Headings; Effect and Modification of Agreement. All article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

Except for the Participation Agreement, this Agreement, including the Annexes hereto, exclusively and completely states the rights of the Vendor and the Vendee with respect to the Equipment and supersedes all other agreements, oral or written, with respect to the Equipment. No variation or modification of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized representatives of the Vendor and the Vendee.



ARTICLE 20. Notice. Any notice hereunder to any of the parties designated below shall be deemed to be properly served if delivered or mailed to it by first class mail, postage prepaid, at the following addresses

(a) to the Vendee, at One Constitution Plaza, Hartford, Connecticut 06115, attention of Corporate Trust Department,

(b) to the Initial Lessee at 4000 West State Street, Milwaukee, Wisconsin 53208, attention of Corporate Traffic Manager,

(c) to the Successor Lessee, at P. O. Box 1808, Washington, D.C. 20013, attention of Vice President--Finance,

(d) to the Builder, at the address specified in Item 1 of Annex A hereto,

(e) to any assignee of the Vendor, or of the Vendee, at such address as may have been furnished in writing to the Vendee, or the Vendor, as the case may be, and to the Lessee, by such assignee,

or at such other address as may have been furnished in writing by such party to the other parties to this Agreement.

ARTICLE 21. Immunities; Satisfaction of Undertakings. No recourse shall be had in respect of any obligation due under this Agreement, or referred to herein, against any incorporator, stockholder, director or officer, as such, past, present or future, of the parties hereto, whether by virtue of any constitutional provision, statute or rule of law, or by enforcement of any assessment or penalty or otherwise, all such liability, whether at common law, in equity, by any constitutional provision, statute or otherwise, of such incorporators, stockholders, directors or officers, as such, being forever released as a condition of and as consideration for the execution of this Agreement.

The obligations of the Vendee under the second and eighth paragraphs of Article 16 and under Articles 3, 6, 7 (other than the second and third sentences of the second paragraph thereof to the extent that certificates or payment schedules are required to be prepared and furnished therein), 8, 9, 10, 12 (other than the proviso to the last paragraph

thereof), 13 and 18 hereof shall be deemed in all respects satisfied by the Lessee's undertakings contained in the Lease. The Vendee shall not have any responsibility for the Lessee's failure to perform such obligations, but if the same shall not be performed they shall constitute the basis for an event of default hereunder pursuant to Article 15 hereof. No waiver or amendment of the Lessee's undertakings under the Lease shall be effective unless joined in by the Vendor.

It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that each and all of the representations, undertakings and agreements herein made on the part of the Vendee, are made and intended not as personal representations, undertakings and agreements by The Connecticut Bank and Trust Company, or for the purpose or with the intention of binding said corporation personally but are made and intended for the purpose of binding only the Trust Estate as such term is used in the Trust Agreement, subject to the limitations of Article 4, and this Agreement is executed and delivered by said corporation not in its own right but solely in the exercise of the powers expressly conferred upon it as trustee under the Trust Agreement; and except in the case of gross negligence or wilful misconduct, no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against said corporation or any Beneficiary on account of this Agreement or on account of any representation, undertaking or agreement of the said corporation or any Beneficiary, either expressed or implied, all such personal liability, if any, being expressly waived and released by the Vendor and by all persons claiming by, through or under the Vendor.

The Vendee agrees that it will not enter into any amendment to or modification of the Trust Agreement except as provided in Article VIII thereof.

ARTICLE 22. Law Governing. The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of New York; provided, however, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act and such additional rights arising out of the filing, recording or deposit hereof, if any, and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof shall be filed, recorded or deposited.

ARTICLE 23. Execution. This Agreement may be executed in any number of counterparts, such counterparts together constituting but one and the same contract, but the counterpart delivered to the Assignee pursuant to the Assignment shall be deemed the original and all other counterparts shall be deemed duplicates thereof. Although for convenience this Agreement is dated as of the date first above written, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the parties hereto have executed or caused this instrument to be executed all as of the date first above written.

FRUIT GROWERS EXPRESS COMPANY,

by

  
President


[CORPORATE SEAL]

Attest:

  
Secretary

THE CONNECTICUT BANK AND TRUST  
COMPANY, as Owner Trustee,

by

  
Assistant Secretary

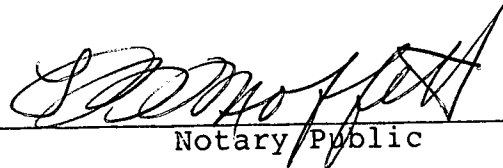
[CORPORATE SEAL]

Attest:

  
ASSISTANT VICE PRESIDENT

CITY OF WASHINGTON,     )  
                                  )   ss.:  
DISTRICT OF COLUMBIA, )

On this 18<sup>th</sup> day of July 1977, before me personally appeared C. S. HILL, to me personally known, who, being by me duly sworn, says that he is President of Fruit Growers Express Company, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

  
\_\_\_\_\_  
Notary Public

My Commission expires

L. W. MOFFETT, Notary Public  
City of Washington, District of Columbia  
My Commission Expires October 14, 1977



STATE OF CONNECTICUT, )  
 ) ss.: *Hartford*  
COUNTY OF HARTFORD, )

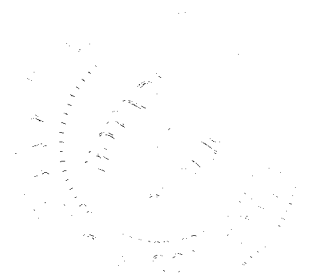
The foregoing instrument was acknowledged before me this *15th* day of July 1977 by a ~~Assistant Secretary~~ of The Connecticut Bank and Trust Company, a Connecticut banking corporation, on behalf of the corporation.

*Barbara S. Kacich*

Notary Public

My Commission expires

**BARBARA S. KACICH**  
**NOTARY PUBLIC**  
MY COMMISSION EXPIRES MARCH 31, 1982



# SCHEDULE I

Allocation Schedule of Each  
\$1,000,000 of Conditional  
Sale Indebtedness Payable  
in Instalments from April 1, 1978,  
Through October 1, 1980

<u>Date</u>	<u>Principal Balance (Before Payment)</u>	<u>Interest Payment</u>	<u>Principal Recovery</u>	<u>Total Payment</u>
April 1, 1978	\$1,000,000.00	\$41,250.00	\$18,459.18	\$59,709.18
October 1, 1978	981,540.82	40,488.56	19,220.62	59,709.18
April 1, 1979	962,320.20	39,695.71	20,013.47	59,709.18
October 1, 1979	942,306.73	38,870.16	20,839.02	59,709.18
April 1, 1980	921,467.71	38,010.55	21,698.63	59,709.18
October 1, 1980	899,769.08	37,115.48	22,593.70	59,709.18

# SCHEDULE II

Allocation Schedule of Each  
\$1,000,000 of Conditional  
Sale Indebtedness Payable  
in Instalments from April 1, 1981,  
Through October 1, 1987

<u>Date</u>	<u>Principal Balance (Before Payment)</u>	<u>Interest Payment</u>	<u>Principal Recovery</u>	<u>Total Payment</u>
April 1, 1981	\$877,175.38	\$36,183.49	\$18,510.08	\$54,693.57
October 1, 1981	858,665.30	35,419.95	19,273.62	54,693.57
April 1, 1982	839,391.68	34,624.91	20,068.66	54,693.57
October 1, 1982	819,323.02	33,797.08	20,896.49	54,693.57
April 1, 1983	798,426.53	32,935.10	21,758.47	54,693.57
October 1, 1983	776,668.06	32,037.56	22,656.01	54,693.57
April 1, 1984	754,012.05	31,103.00	23,590.57	54,693.57
October 1, 1984	730,421.48	30,129.89	24,563.68	54,693.57
April 1, 1985	705,857.80	29,116.64	25,576.93	54,693.57
October 1, 1985	680,280.87	28,061.59	26,631.98	54,693.57
April 1, 1986	653,648.89	26,963.02	27,730.55	54,693.57
October 1, 1986	625,918.34	25,819.13	28,874.44	54,693.57
April 1, 1987	597,043.90	24,628.06	30,065.51	54,693.57
October 1, 1987	566,978.39	23,387.86	31,305.71	54,693.57

### SCHEDULE III

Allocation Schedule of Each  
\$1,000,000 of Conditional  
Sale Indebtedness Payable  
in Instalments from April 1, 1988,  
Through April 1, 1991

<u>Date</u>	<u>Principal Balance (Before Payment)</u>	<u>Interest Payment</u>	<u>Principal Recovery</u>	<u>Total Payment</u>
April 1, 1988	\$535,672.68	\$22,096.50	\$44,262.91	\$66,359.41
October 1, 1988	491,409.77	20,270.66	46,088.75	66,359.41
April 1, 1989	445,321.02	18,369.50	47,989.91	66,359.41
October 1, 1989	397,331.11	16,389.91	49,969.50	66,359.41
April 1, 1990	347,361.61	14,328.67	52,030.74	66,359.41
October 1, 1990	295,330.87	12,182.40	54,177.01	66,359.41
April 1, 1991	241,153.86	9,947.60	56,411.81	66,359.41



# SCHEDULE IV

Allocation Schedule of Each  
\$1,000,000 of Conditional  
Sale Indebtedness Payable  
in Instalments from October 1, 1991,  
Through October 1, 1995

<u>Date</u>	<u>Principal Balance (Before Payment)</u>	<u>Interest Payment</u>	<u>Principal Recovery</u>	<u>Total Payment</u>
October 1, 1991	\$184,742.05	\$7,620.60	\$17,367.64	\$24,988.24
April 1, 1992	167,374.41	6,904.19	18,084.05	24,988.24
October 1, 1992	149,290.36	6,158.22	18,830.02	24,988.24
April 1, 1993	130,460.34	5,381.48	19,606.76	24,988.24
October 1, 1993	110,853.58	4,572.71	20,415.53	24,988.24
April 1, 1994	90,438.05	3,730.56	21,257.68	24,988.24
October 1, 1994	69,180.37	2,853.69	22,134.55	24,988.24
April 1, 1995	47,045.82	1,940.64	23,047.60	24,988.24
October 1, 1995	23,998.22	989.93	23,998.22	24,988.15

Annex A

to

Conditional Sale Agreement

- Item 1: Fruit Growers Express Company, a Delaware corporation having an address at 1101 Vermont Avenue, N.W., Washington, D.C. 20005.
- Item 2: The Equipment shall be settled for in not more than 6 Groups of units of the Equipment delivered to and accepted by the Vendee unless a greater number shall be agreed to by the parties hereto.
- Item 3: The Builder warrants that the Equipment will be built in accordance with the Specifications and the standards and requirements set forth in Article 2 of the Conditional Sale Agreement to which this Annex is attached (hereinafter called the Agreement) and warrants the Equipment will be free from defects in material (except as to specialties incorporated therein and workmanship with respect thereto specified by the Initial Lessee or the Successor Lessee and not manufactured by the Builder) and workmanship under normal use and service. The Builder's liability under this Item 3 is limited to repair or replacement at its plant of any part or parts of any unit of Equipment which shall, within one year after the delivery of such unit of Equipment to the Vendee (or, in the case of patent defects, within 10 days after delivery), be returned to the Builder with transportation charges prepaid and which examination by the Builder shall disclose to its satisfaction to have been thus defective. Any unit of Equipment repaired, replaced or altered outside of the Builder's plant, the repair, replacement or alteration of which in the Builder's judgment has adversely affected in any way the strength and performance of such unit of Equipment, is removed from this warranty. In no event shall the Builder be liable to anyone for any incidental, special or consequential damages of any kind. The foregoing warranty is expressly in lieu of all other warranties, expressed or implied, including any implied warranty of merchantability or fitness for a particular purpose, and the Builder neither assumes nor authorizes any person to assume

for it any other liability in connection with the construction and delivery of the Equipment, except for the patent indemnification included in Item 4 hereof and as aforesaid.

The Builder further agrees with the Vendee that neither the inspection as provided in Article 3 of the Agreement, nor any examination, nor the acceptance of any units of the Equipment as provided in said Article 3 shall be deemed a waiver or a modification by the Vendee of any of its rights under this Item 3.

- Item 4: Except in cases of articles or materials specified by the Initial Lessee or the Successor Lessee and not manufactured by the Builder and in cases of designs, systems, processes, formulae or combinations specified by the Initial Lessee or the Successor Lessee and not developed or purported to be developed by the Builder, the Builder agrees to indemnify, protect and hold harmless the Vendee, any Beneficiary, the Initial Lessee and the Successor Lessee from and against any and all liability, claims, costs, charges and expense, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Vendee, any Beneficiary, the Initial Lessee or the Successor Lessee, their assigns or the users of the Equipment, because of the use in or about the construction or operation of any of the Equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. The Vendee, any Beneficiary, the Initial Lessee and the Successor Lessee will give prompt notice to the Builder of any claim known to them, respectively, from which liability may be charged against the Builder hereunder. At its expense and cost, the Builder with its counsel shall defend such claim. The Vendee, any Beneficiary, the Initial Lessee and the Successor Lessee shall provide such information as they may possess reasonably to enable the Builder to defend such claim. The Builder agrees to and hereby does, to the extent legally possible without impairing any claim, right or cause of action hereinafter referred to, assign, set over and deliver to the


Vendee, any Beneficiary, the Initial Lessee and the Successor Lessee every claim, right and cause of action which the Builder has or hereafter shall have against the seller or sellers of any designs, systems, processes, formulae, combinations, articles or materials specified by such Lessee and purchased or otherwise acquired by the Builder for use in or about the construction or operation of any of the Equipment on the ground that any such design, system, process, formula, combination, article or material or operation thereof infringes or is claimed to infringe on any patent or other right. The Builder further agrees to execute and deliver to the Vendee, each Beneficiary, the Initial Lessee and the Successor Lessee or the users of the Equipment all and every such further assurance as may be reasonably requested more fully to effectuate the assignment and delivery of every such claim, right and cause of action. Such covenants of indemnity shall continue in full force and effect notwithstanding the full payment of all sums due under this Agreement, or the satisfaction, discharge or termination of this Agreement in any manner whatsoever.

- Item 5: The Maximum Purchase Price referred to in Article 4 of the Conditional Sale Agreement to which this Annex A is attached is \$12,100,000.
- Item 6: The Maximum Conditional Sale Indebtedness referred to in Article 4 of the Conditional Sale Agreement to which this Annex A is attached is \$7,747,645.

Annex B

to

Conditional Sale Agreement

Type	Builder's Specifi- cations	Builder's Plant	Quantity	Successor Lessee's Road Numbers (Both Inclusive)	Unit		Estimated Time and Place of Delivery
					Base Price	Total Base Price	
52'6" insulated 70-ton box cars	S-412-1D revised 3/31/77	Alexandria, Va.	250	650-899	\$39,325.21	\$9,940,927.50	June-Sep- tember, at 1977, at Alex- andria, Va.
					438.50 (Freight)		
					39,763.81	MJR	
							

AAR Mechan-  
ical  
Designation:  
XRI

LP

LEASE OF RAILROAD EQUIPMENT

Dated as of May 15, 1977

among

MILLER BREWING COMPANY,

SOUTHERN RAILWAY COMPANY

and

THE CONNECTICUT BANK AND TRUST COMPANY,  
as Owner Trustee

---

LEASE OF RAILROAD EQUIPMENT dated as of May 15, 1977, among MILLER BREWING COMPANY, a Wisconsin corporation (hereinafter called the Initial Lessee), SOUTHERN RAILWAY COMPANY, a Virginia corporation (hereinafter called the Successor Lessee), and THE CONNECTICUT BANK AND TRUST COMPANY, a Connecticut banking corporation, as Trustee (hereinafter called the Lessor) under a Trust Agreement dated as of April 7, 1977 (hereinafter called the Trust Agreement), with Michigan National Bank, ITT Industrial Capital Company and The Fifth Third Leasing Company (hereinafter collectively called the Beneficiaries).

WHEREAS the Lessor is entering into a conditional sale agreement dated as of the date hereof with Fruit Growers Express Company, a Delaware corporation (hereinafter called the Builder), (such agreement being hereinafter called the Security Documentation), wherein the Builder has agreed to manufacture, sell and deliver to the Lessor the units of railroad equipment described in Schedule A hereto (hereinafter called the Equipment);

WHEREAS the Builder is assigning its interests in the Security Documentation to Mercantile-Safe Deposit and Trust Company, acting as agent (said trust company, as so acting, being hereinafter together with its successors and assigns called the Vendor) under a Participation Agreement dated as of the date hereof (hereinafter called the Participation Agreement) with the Initial Lessee, the Successor Lessee, the Lessor, the Beneficiaries and the parties named in Schedule A thereto; and

WHEREAS the Initial Lessee and the Successor Lessee desire that the Initial Lessee lease such number of units of the Equipment as are delivered and accepted and settled for under the Security Documentation (hereinafter called the Units) for the period specified in § 4 hereof and that upon the expiration of such period the Successor Lessee lease the Units, in each case at the rentals and for the terms and upon the conditions hereinafter provided (except as hereinafter specifically provided, the term Lessee as used herein shall during the period through the Succession Date (as defined in

§ 4 hereof) mean the Initial Lessee, and thereafter such term shall mean the Successor Lessee);

NOW, THEREFORE, in consideration of the premises and of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by the Lessee, the Lessor hereby leases the Units to the Lessee upon the following terms and conditions:

§ 1. Net Lease. This Lease is a net lease, and the Lessee shall not be entitled to any abatement of rent, reduction thereof or setoff against rent, including, but not limited to, abatements, reductions or setoffs due or alleged to be due by reason of any past, present or future claims of the Lessee against the Lessor under this Lease or under the Security Documentation, or against the Builder or the Vendor or otherwise; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use or destruction of all or any of the Units from whatsoever cause, any liens, encumbrances or rights of others with respect to any of the Units, the prohibition of or other restriction against the Lessee's use of all or any of the Units, the interference with such use by any person or entity, the invalidity or unenforceability or lack of due authorization of this Lease, any insolvency of or any bankruptcy, reorganization or similar proceeding against the Lessee, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. To the extent permitted by applicable law, each of the Initial Lessee and the Successor Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Units except in accordance with the express terms hereof. Each rental or other payment made by the Lessee hereunder shall be final, and the Lessee shall not seek to recover all or any part of such payment from the Lessor for any reason whatsoever.



§ 2. Delivery and Acceptance of Units. The Lessor hereby appoints the Successor Lessee its agent for inspection and acceptance of the Units pursuant to the Security Documentation. The Lessor will cause each Unit to be delivered to the Initial Lessee at the point or points within the United States of America at which such Unit is delivered to the Lessor under the Security Documentation. Upon such delivery, the Successor Lessee will cause an employee of the Successor Lessee to inspect the same, and if such Unit is found to be acceptable, to accept delivery of such Unit, and the Successor Lessee shall execute and deliver to the Lessor a certificate of acceptance (hereinafter called the Certificate of Acceptance), in accordance with the provisions of Article 3 of the Security Documentation, stating that such Unit has been inspected and accepted on behalf of the Initial Lessee and the Lessor by the Successor Lessee on the date of such Certificate of Acceptance and is marked in accordance with § 5 hereof, whereupon, except as provided in the next sentence hereof, such Unit shall be deemed to have been delivered to and accepted by the Lessee and shall be subject thereafter to all the terms and conditions of this Lease. The delivery, inspection and acceptance hereunder of any unit of Equipment excluded from the Security Documentation pursuant to the first paragraph of Article 4 thereof shall be null and void and ineffective to subject such unit to this Lease.

§ 3. Rentals. The Lessee agrees to pay to the Lessor, as rental for each Unit subject to this Lease, 37 consecutive semiannual payments payable on April 1 and October 1 of each year commencing October 1, 1977. The rental payment payable on October 1, 1977, shall be in an amount equal to the product of the Purchase Price (as defined in the Security Documentation) of each Unit then subject to this Lease multiplied by the percentage set forth in Item 1 of Schedule B hereto for each day (computed on the basis of a 360-day year of twelve 30-day months) elapsed from and including the date such Unit is settled for under the Security Documentation, to but not including October 1, 1977, plus amounts equal to the amounts required by the Lessor to make the payments provided for in the last paragraph of Paragraph 9 of the Participation Agreement. The next 6 rental payments shall each be in an amount equal to 3.823185% of the Purchase Price of each Unit then subject to this Lease; the next 14 rental payments shall each be in an amount equal to 3.502035% of the Purchase Price of each Unit then subject to this Lease; and the final 16 rental payments shall each be in an amount equal to 4.2490% of the Purchase Price of

each Unit then subject to this Lease. If the delivery date of any Unit is later than August 31, 1977, the Lessor, the Initial Lessee and the Successor Lessee agree that the rentals payable hereunder and the Casualty Value percentages set forth in Schedule B hereto will be appropriately adjusted in order that the Beneficiaries' after-tax return on and rate of recovery of investment and the annual net cash flows (computed on the same assumptions, including, without limitation, tax rates, as were utilized by the Beneficiaries in originally evaluating this transaction) will not be increased or decreased by reason thereof; provided, however, that the rentals and Casualty Value percentages, as so adjusted, shall be sufficient to satisfy the obligations of the Lessor under the Security Documentation, notwithstanding any limitation of liability contained therein.

The rental payments hereinbefore set forth are also subject to adjustment pursuant to § 9 hereof.

If any of the semiannual rental payment dates referred to above is not a business day the semiannual rental payment otherwise payable on such date shall be payable on the next succeeding business day. The term "business day" as used herein means a calendar day, excluding Saturdays, Sundays and any other day on which banking institutions in New York, New York, or Baltimore, Maryland, are authorized or obligated to remain closed.

The Lessor irrevocably instructs the Lessee to make all the payments provided for in this Lease, including, but not limited to, the payments provided for in this § 3 and in § 7 hereof, at the principal office of the Vendor, for the account of the Lessor in care of the Vendor, with instructions to the Vendor first, to apply such payments to satisfy the obligations of the Lessor under the Security Documentation, and second, so long as no event of default or event which with the lapse of time and/or demand provided for in the Security Documentation could constitute an event of default under the Security Documentation shall have occurred and be continuing, to pay any balance promptly to the Lessor at such place as the Lessor shall specify in writing. The Lessee agrees to make each payment provided for herein as contemplated by this paragraph in Federal or other funds immediately available to the Vendor by 11:00 a.m., Baltimore, Maryland, time, on the date such payment is due.

§ 4. Term of Lease. The term of this Lease as to

each Unit shall begin on the date of delivery and acceptance of such Unit hereunder and, subject to the provisions of §§ 7, 10 and 13 hereof, shall terminate on the date on which the final payment of rent in respect thereof is due pursuant to § 3 hereof. The Initial Lessee shall for all purposes be the Lessee hereunder until an April 1 or October 1 mutually agreed upon by the Initial Lessee and the Successor Lessee which date (hereinafter called the Succession Date) shall be not earlier than October 1, 1978, and not later than October 1, 1980. The Initial Lessee and the Successor Lessee will give the Lessor, the Agent, the Owner Trustee and the Beneficiaries not less than two months' written notice of the Succession Date, and if such notice has not been given by August 1, 1980, then without further action or notice October 1, 1980, shall be the Succession Date. The Initial Lessee shall make the rental payments due on and prior to the Succession Date and all payments in respect of Casualty Occurrences occurring prior to the Succession Date, and from and after the Succession Date the Successor Lessee shall for all purposes (except as provided in the last sentence of this paragraph) be the Lessee hereunder, irrespective of the date upon which any Unit shall actually be delivered to the Successor Lessee. The Successor Lessee hereby agrees that it shall not be permitted to avoid or in any manner defend against the enforcement hereunder of any of its obligations with respect to any Unit whether or not the Initial Lessee shall fail to surrender possession thereof to the Successor Lessee or shall deliver such Unit to the Successor Lessee in any condition which shall then fail to comply with maintenance or other obligations with respect thereto contained herein. Any recourse of the Successor Lessee in respect of any such matters shall be solely against the Initial Lessee and any Guarantor of its obligations hereunder. The obligations of each of the Initial Lessee and of the Successor Lessee as the Lessee hereunder (including, but not limited to, the obligations under §§ 6, 7, 9 and 14 hereof) shall survive the expiration of the term of this Lease.

Notwithstanding anything to the contrary contained herein, all rights and obligations of the Lessee under this Lease and in and to the Units are subject to the rights of the Vendor under the Security Documentation. If an event of default should occur under the Security Documentation, the Vendor may terminate this Lease (or rescind its termination), all as provided therein.

§ 5. Identification Marks. The Lessee will cause

each Unit to be kept numbered with the road number set forth in Schedule A hereto, or in the case of any Unit not there listed, such road number as shall be set forth in any amendment or supplement hereto extending this Lease to cover such Unit, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each Unit, in letters not less than one-half inch in height, the words "Ownership subject to a Security Agreement Filed under the Interstate Commerce Act, Section 20c", "Owned by a Bank or Trust Company under a Security Agreement Filed under the Interstate Commerce Act, Section 20c" or other appropriate words designated by the Vendor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Lessor's and Vendor's title to and interest in such Unit and the rights of the Lessor under this Lease and of the rights of the Vendor under the Security Documentation. The Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such words shall have been so marked and will replace promptly any such markings which may be removed, obliterated, defaced or destroyed. The Lessee will not change the road number of any Unit unless and until (i) a statement of new number or numbers to be substituted therefor shall have been filed with the Vendor and the Lessor and duly filed, recorded and deposited by the Lessee in all public offices where this Lease and the Security Documentation shall have been filed, recorded and deposited and (ii) the Lessee shall have furnished the Vendor and the Lessor an opinion of counsel to such effect, such certificate and opinion to be furnished also to the Successor Lessee in the case of any such changes made by the Initial Lessee. The Units may be lettered with the names or initials or other insignia customarily used by the Successor Lessee or its affiliates.

Except as provided in the immediately preceding paragraph, the Lessee will not allow the name of any person, association or corporation to be placed on any Unit as a designation that might be interpreted as a claim of ownership.

§ 6. Taxes. All payments to be made by the Lessee hereunder will be free of expense to the Lessor for collection or other charges and will be free of expense to the Lessor with respect to the amount of any local, state, federal, or foreign taxes (other than any United States federal income tax payable by the Lessor in consequence of the receipt of payments provided for herein and other

than the aggregate of all state or local taxes measured by net income based on such receipts, up to the amount of any such taxes based on such receipts which would be payable to the state and locality in which the Lessor has its principal place of business without apportionment to any other state, except any such tax which is in substitution for or relieves the Lessee from the payment of taxes which it would otherwise be obligated to pay or reimburse as herein provided) or license fees, assessments, charges, fines or penalties (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called impositions) hereafter levied or imposed upon or in connection with or measured by this Lease or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof or the Security Documentation, all of which impositions the Lessee assumes and agrees to pay on demand in addition to the payments to be made by it provided for herein. The Lessee will also pay promptly all impositions which may be imposed upon any Unit or for the use or operation thereof (except as provided above) or upon the earnings arising therefrom (except as provided above) or upon the Lessor solely by reason of its ownership thereof and will keep at all times all and every part of such Unit free and clear of all impositions which might in any way affect the title of the Lessor or the interest of the Lessor or result in a lien upon any such Unit; provided, however, that the Lessee shall be under no obligation to pay any impositions of any kind so long as it is contesting in good faith and by appropriate legal or administrative proceedings such impositions and the nonpayment thereof does not, in the reasonable opinion of the Lessor, adversely affect the title, property or rights of the Lessor hereunder or the Vendor under the Security Documentation. The Lessee agrees to give the Lessor notice of such contest within 30 days after institution thereof, and the Lessor agrees to provide such information as may be reasonably requested by the Lessee in furtherance of such contest. If any impositions shall have been charged or levied against the Lessor directly and paid by the Lessor, the Lessee shall reimburse the Lessor on presentation of an invoice therefor; provided, however, that the Lessor shall have given the Lessee written notice of such imposition prior to such payment.

In the event that the Lessor shall become obligated to make any payment to the Builder or the Vendor or otherwise pursuant to any correlative provision of the Security Documentation not covered by the foregoing paragraph of this

§ 6, the Lessee shall pay such additional amounts (which shall also be deemed impositions hereunder) to the Lessor as will enable the Lessor to fulfill completely its obligations pursuant to said provision.

In the event any reports with regard to impositions are required to be made, the Lessee will, where permitted so to do under applicable rules or regulations, make and timely file such reports in such manner as to show the interest of the Lessor and the Vendor as shall be reasonably satisfactory to the Lessor and the Vendor or, where not so permitted, will notify the Lessor and the Vendor of such requirement and will prepare and deliver such reports to the Lessor and the Vendor within a reasonable time prior to the time such reports are to be filed in such manner as shall be satisfactory to the Lessor and the Vendor.

In the event that, during the continuance of this Lease, the Lessee becomes liable for the payment or reimbursement of any imposition, pursuant to this § 6, such liability shall continue, notwithstanding the expiration of this Lease, until all such impositions are paid or reimbursed by the Lessee.

To the extent the Lessee may be prohibited by law from performing in its own name the duties required by this § 6, the Lessor hereby authorizes the Lessee to act in the Lessor's own name and on the Lessor's behalf; provided, however, that the Lessee shall indemnify and hold the Lessor harmless from and against any and all claims, costs, expenses, damages, losses and liabilities incurred in connection therewith as a result of, or incident to, any action by the Lessee pursuant to this authorization.

The Lessee shall, whenever reasonably requested by the Lessor, submit to the Lessor copies of returns, statements, reports, billings and remittances, or furnish other evidence satisfactory to the Lessor of the Lessee's performance of its duties under this § 6. The Lessee shall also furnish promptly upon request such data as the Lessor reasonably may require to permit the Lessor's compliance with the requirements of taxing jurisdictions.

§ 7. Maintenance; Casualty Occurrences; Insurance. The Lessee agrees that, at its own cost and expense, it will maintain and keep each Unit which is subject to this Lease in good operating order, repair and condition.

In the event that any Unit shall be or become worn out, lost, stolen, destroyed, or irreparably damaged, from any cause whatsoever, returned to the Builder pursuant to the patent indemnity provisions of the Security Documentation, or taken or requisitioned by condemnation or otherwise resulting in loss of possession by the Lessee for a period of 90 consecutive days, except requisition for use by the United States Government (such occurrences being hereinafter called Casualty Occurrences), prior to the return of such Unit in the manner set forth in § 14 hereof, the Lessee shall promptly and fully notify the Lessor and the Vendor with respect thereto. On the rental payment date next succeeding such notice the Lessee shall pay to the Lessor an amount equal to the rental payment or payments in respect of such Unit due and payable on such date plus a sum equal to the Casualty Value (as hereinafter defined) of such Unit as of the date of such payment in accordance with the schedule referred to below. Upon the making of such payment by the Lessee in respect of any Unit, the rental for such Unit shall cease to accrue, the term of this Lease as to such Unit shall terminate and (except in the case of the loss, theft, complete destruction or return to the Builder of such Unit) the Lessor shall be entitled to recover possession of such Unit. The Lessor hereby appoints the Lessee its agent to dispose of any Unit suffering a Casualty Occurrence or any component thereof, at the best price obtainable on an "as is, where is" basis. Provided that the Lessee has previously paid the Casualty Value to the Lessor, the Lessee shall be entitled to the proceeds of such sale to the extent they do not exceed the Casualty Value of such Unit, and shall pay any excess to the Lessor. The Lessee shall be entitled to credit against the Casualty Value payable in respect of any Unit returned to the Builder pursuant to the patent indemnity provisions of the Security Documentation in an amount equal to any payment made by the Builder to the Lessor in respect thereof under the Security Documentation.

The Casualty Value of each Unit as of the payment date on which payment is to be made as aforesaid shall be that percentage of the Purchase Price of such Unit as is set forth in the Schedule in item 2 of Schedule B hereto opposite such date.

Whenever any Unit shall suffer a Casualty Occurrence after termination of this Lease and before such Unit shall have been returned in the manner provided in § 14 hereof, the Lessee shall promptly and fully notify the Lessor

with respect thereto and pay to the Lessor an amount equal to the Casualty Value of such Unit, which shall be an amount equal to 25% of the Purchase Price of such Unit. Upon the making of any such payment by the Lessee in respect of any Unit (except in the case of the loss, theft or complete destruction of such Unit), the Lessor shall be entitled to recover possession of such Unit. The Lessor hereby appoints the Lessee its agent to dispose of any Unit suffering a Casualty Occurrence or any component thereof, at the best price obtainable on an "as is, where is" basis. Provided that the Lessee has previously paid the Casualty Value to the Lessor, the Lessee shall be entitled to the proceeds of such sale to the extent they do not exceed the Casualty Value of such Unit, and shall pay any excess to the Lessor.

In the event of the requisition for use by the United States Government (hereinafter called the Government) of any Unit during the term of this Lease or any renewal thereof all of the Lessee's obligations under this Lease with respect to such Unit shall continue to the same extent as if such requisition had not occurred, except that if such Unit is returned by the Government at any time after the end of the term of this Lease or any renewal thereof, the Lessee shall be obligated to return such Unit to the Lessor pursuant to § 11 or 14 hereof, as the case may be, promptly upon such return by the Government rather than at the end of the term of this Lease or any renewal thereof, but the Lessee shall in all other respects comply with the provisions of said § 11 or 14, as the case may be, with respect to such Unit. All payments received by the Lessor or the Lessee from the Government for the use of such Unit during the term of this Lease or any renewal thereof shall be paid over to, or retained by, the Lessee provided no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing; and all payments received by the Lessor or the Lessee from the Government for the use of such Unit after the term of this Lease or any renewal thereof, shall be paid over to, or retained by, the Lessor.

Except as hereinabove in this § 7 provided, the Lessee shall not be released from its obligations hereunder in the event of, and shall bear the risk of, any Casualty Occurrence to any Unit from and after delivery and acceptance thereof by the Lessee hereunder.

The Lessee will, at all times prior to the return



of the Equipment to the Lessor, at its own expense, cause to be carried and maintained property insurance in respect of the Units at the time subject hereto, and public liability insurance, in amounts and against risks customarily insured against by the Lessee in respect of similar equipment owned by it, and the benefits thereof shall be payable to the Lessor and the Lessee, as their interests may appear, it being understood that the Lessee may self insure with respect to property insurance if such is its normal practice with respect to similar equipment. If the Lessor shall receive any insurance proceeds from insurance maintained by the Lessee pursuant hereto or condemnation payments in respect of a Unit suffering a Casualty Occurrence, the Lessor shall, subject to the Lessee having made payment of the Casualty Value in respect of such Unit, pay such proceeds or condemnation payments to the Lessee up to an amount equal to the Casualty Value with respect to a Unit paid by the Lessee, and any balance of such proceeds or condemnation payments shall remain the property of the Lessor. All insurance proceeds received by the Lessor in respect of any Unit not suffering a Casualty Occurrence shall be paid to the Lessee upon proof satisfactory to the Lessor that any damage to such Unit in respect of which such proceeds were paid has been fully repaired.

§ 8. Reports. On or before April 30 in each year, commencing with the calendar year 1978, and on the Succession Date, the Lessee will furnish to the Lessor and the Vendor an accurate statement (a) setting forth as at the preceding December 31 the amount, description and numbers of all Units then leased hereunder and covered by the Security Documentation, the amount, description and numbers of all Units that have suffered a Casualty Occurrence during the preceding calendar year or are then undergoing repairs (other than running repairs) or then withdrawn from use pending such repairs (other than running repairs) and such other information regarding the condition and state of repair of the Units as the Lessor or the Vendor may reasonably request and (b) stating that, in the case of all Units repainted or repaired during the period covered by such statement, the numbers and markings required by § 5 hereof and by the Security Documentation have been preserved or replaced. The Lessor, at its sole cost and expense, shall have the right by its agents, to inspect the Units and the Lessee's records with respect thereto at such reasonable times as the Lessor may request during the continuance of this Lease.

§ 9. Disclaimer of Warranties; Compliance with Laws and Rules; Indemnification. THE LESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE UNITS DELIVERED TO THE LESSEE HEREUNDER, AND THE LESSOR MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS OF THE UNITS FOR ANY PARTICULAR PURPOSE OR AS TO TITLE TO THE UNITS OR ANY COMPONENT THEREOF, OR ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY UNIT, EITHER UPON DELIVERY THEREOF TO THE LESSEE OR OTHERWISE, it being agreed that all such risks, as between the Lessor and the Lessee, are to be borne by the Lessee; but the Lessor hereby irrevocably appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce from time to time, in the name of and for the account of the Lessor and/or the Lessee, as their interests may appear, at the Lessee's sole cost and expense, whatever claims and rights the Lessor may have against the Builder under the provisions of Items 3 and 4 of Annex A of the Security Documentation; provided, however, that if at any time an Event of Default shall have occurred and be continuing, the Lessor may assert and enforce, at the Lessee's sole cost and expense, such claims and rights. The Lessor shall have no responsibility or liability to the Lessee or any other person with respect to any of the following: (i) any liability, loss or damage caused or alleged to be caused directly or indirectly by any Units or by any inadequacy thereof or deficiency or defect therein or by any other circumstances in connection therewith; (ii) the use, operation or performance of any Units or any risks relating thereto; (iii) any interruption of service, loss of business or anticipated profits or consequential damages; or (iv) the delivery, operation, servicing, maintenance, repair, improvement or replacement of any Units. The Successor Lessee's delivery of a Certificate of Acceptance shall be conclusive evidence as between the Lessee and the Lessor that the Units described therein are in all the foregoing respects satisfactory to the Lessee, and the Lessee will not assert any claim of any nature whatsoever against the Lessor based on any of the foregoing matters.

The Lessee agrees, for the benefit of the Lessor and the Vendor, to comply in all respects (including without limitation, with respect to the use, maintenance and operation of each Unit) with all applicable laws of the jurisdictions in which its operations involving the Units may extend, with the interchange rules of the Association of American

Railroads and with all lawful rules of the Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units, to the extent that such laws and rules affect the title, operation or use of the Units, and in the event that, prior to the expiration of this Lease or any renewal hereof, such laws or rules require any alteration, replacement, addition or modification of or to any part on any Unit, the Lessee will conform therewith at its own expense, and title to any additions or improvements so made shall thereupon vest in the Lessor; provided, however, that the Lessee may at its own expense upon written notice thereof to the Lessor and the Beneficiaries, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Lessor or the Vendor, adversely affect the property or rights of the Lessor or the Vendor under this Lease or under the Security Documentation. The Lessee, at its own cost and expense, may furnish additions, modifications and improvements to the Units during the term of this Lease provided that such additions, modifications and improvements are readily removable without causing material damage to the Units. The additions, modifications and improvements made by the Lessee under the preceding sentence shall be owned by the Lessee, and any such additions, modifications and improvements made by the Initial Lessee or its sublessee and not removed prior to the Succession Date shall become the property of the Successor Lessee on the Succession Date and, together with additions, modifications and improvements made after the Succession Date, shall be removed by the Lessee, at its expense, upon or prior to return of any Unit to the Lessor pursuant to § 11 or § 14 hereof. In the event the Lessee shall make any alteration, replacement, addition or modification to any Unit pursuant to the first sentence of this paragraph (the "Alterations"), the Lessor agrees that it will include the cost thereof in its gross income for Federal income tax purposes. The Lessee agrees that, within 30 days after the close of any calendar quarter in which the Lessee has made Alterations, the Lessee will give written notice thereof to the Lessor describing, in reasonable detail, the Alterations and specifying the cost thereof with respect to each Unit.

The Lessee agrees to indemnify, protect and hold

harmless the Lessor (in both its individual and fiduciary capacities), the Beneficiaries and the Vendor from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including, but not limited to, counsel fees and expenses, patent liabilities, penalties and interest, arising out of or as the result of the entering into or the performance of or the occurrence of a default, an event of default or an Event of Default under the Security Documentation, the Participation Agreement or this Lease, the ownership of any Unit, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any Unit or any accident in connection with the operation, use, condition, possession, storage or return of any Unit resulting in damage to property or injury or death to any person, except as otherwise provided in § 14 of this Lease or the transfer of title to the Equipment by the Vendor pursuant to any provision of the Security Documentation. The indemnities arising under this paragraph shall continue in full force and effect notwithstanding the full payment of all obligations under this Lease or the expiration or termination of the term of this Lease.

In the event that there are any losses, liabilities or expenses arising out of or resulting from the Investments made pursuant to Paragraph 9 of the Participation Agreement, including, but not limited to, any deficiency in respect thereof, the Lessee agrees that each rental payment due thereafter in respect of Units acquired after such deficiency arose shall be increased by such amount as, in the reasonable opinion of the Lessor, will cause the Lessor's net return (after giving effect to the payment of such losses, liabilities or expenses) to equal the net return (computed on the same assumptions used by the Lessor in originally evaluating this transaction) that would have been available to the Lessor if the Lessor had not been required to pay such losses, liabilities or expenses.

The Lessee agrees to prepare and deliver to the Lessor within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of the Lessor) any and all reports (other than tax returns except as required by the provisions of § 6 hereof) to be filed by the Lessor with any federal, state or other regulatory authority by reason of the ownership by the Lessor or the Vendor of the Units or the leasing thereof to the Lessee.

§ 10. Default. If, during the continuance of this Lease, one or more of the following events (each such event being herein sometimes called an Event of Default) shall occur:

A. default shall be made in payment of any amount provided for in §§ 3, 7 or 13 hereof, and such default shall continue for five business days;

B. the Initial Lessee or the Successor Lessee shall make or permit any unauthorized assignment or transfer of this Lease, or any interest herein, or of the right to possession of the Units, or any thereof;

C. default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Initial Lessee or the Successor Lessee contained herein or in the Participation Agreement, and such default shall continue for 30 days after written notice from the Lessor or the Vendor to such Lessee specifying the default and demanding that the same be remedied;

D. a petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may hereafter be amended, shall be filed by or against the Successor Lessee and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Successor Lessee under this Lease shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed (whether or not subject to ratification) in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees, within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier;

E. any other proceedings shall be commenced by or against the Initial Lessee, the Successor Lessee or Philip Morris Incorporated (hereinafter called the Guarantor) for any relief which includes, or might result in, any modification of the obligations of the

Initial Lessee or the Successor Lessee hereunder or of the Guarantor under the Guaranty Agreement (hereinafter called the Guaranty Agreement) in the form attached as Exhibit C to the Participation Agreement, under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustments of the obligations of the Initial Lessee or the Successor Lessee hereunder or of the obligations of the Guarantor under the Guaranty Agreement), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Initial Lessee or the Successor Lessee under this Lease or of the Guarantor under the Guaranty Agreement, as the case may be, shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Initial Lessee, the Successor Lessee, the Guarantor or for the property of any of them in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such a trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier; provided, however, that none of the events listed in items B and C above and this item E with respect to the Initial Lessee or the Guarantor shall be an Event of Default hereunder after the Succession Date and the payment by the Initial Lessee of all sums required to be paid by the Initial Lessee hereunder; or

F. an event of default set forth in Article 15 of the Security Documentation shall have occurred arising out of any default by the Lessee in performing any of its obligations hereunder;

then, in any such case, the Lessor, at its option, may:

(a) proceed by appropriate court action or actions either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof; or

(b) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Units shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as herein provided; and thereupon the Lessor may by its agents enter upon the premises of the Lessee or other premises where any of the Units may be and take possession of all or any of such Units and thenceforth hold, possess, sell, operate, lease to others and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatever and without any duty to account to the Lessee for such action or inaction or for any proceeds arising therefrom; but the Lessor shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee as damages for loss of the bargain and not as a penalty, whichever of the following amounts the Lessor, in its sole discretion, shall specify: (x) a sum, with respect to each Unit, equal to the excess of the present value, at the time of such termination, of the entire unpaid balance of all rental for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Unit over the then present value of the rental which the Lessor reasonably estimates to be obtainable for the Unit during such period, such present value to be computed in each case on the basis of a 3.74% per annum discount, compounded semiannually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated or (y) an amount equal to the excess, if any, of the Casualty Value as of the rental payment date on or next preceding the date of termination over the amount the Lessor reasonably estimates to be the sales value of such Unit at such time; provided, however, that in the event the Lessor shall have sold any Unit, the Lessor, in lieu of collecting any amounts payable to the Lessor by the Lessee pursuant to the preceding clauses (x) and (y) of this part (b) with respect to such Unit, may, if it shall so elect, demand that the

Lessee pay the Lessor and the Lessee shall pay to the Lessor on the date of such sale, as liquidated damages for loss of a bargain and not as a penalty, an amount equal to the excess, if any, of the Casualty Value for such Unit, as of the rental payment date on or next preceding the date of termination over the net proceeds of such sale.

In addition, the Lessee shall be liable, except as otherwise provided above, for any and all unpaid amounts due hereunder before, during or after the exercise of any of the foregoing remedies and for all reasonable attorneys' fees and other costs and expenses incurred by reason of the occurrence of any Event of Default or the exercise of the Lessor's remedies with respect thereto, including all costs and expenses incurred in connection with the return of any Unit.

The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative and may be exercised concurrently or consecutively, and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is not, at the time in question, prohibited by law. The Lessee hereby waives any and all existing or future claims to any offset against the rental payments due hereunder, and agrees to make such payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf.

The failure of the Lessor to exercise the rights granted it hereunder upon the occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

The Lessee agrees to furnish the Vendee, the original Beneficiaries named in the Participation Agreement and the Vendor, promptly upon any responsible officer becoming aware of any condition which constituted or constitutes an Event of Default under this Lease or which, after notice or lapse of time, or both, would constitute such an Event of Default, written notice specifying such condition and the nature and status thereof. For the purposes of this paragraph, a "responsible officer" shall mean, with respect to the subject matter of any covenant, agreement or obligation



of the Lessee in this Lease contained, in the case of the Initial Lessee, any corporate officer of the Lessee who, in the normal performance of his operational responsibilities, would have knowledge of such matter and the requirements of this Lease with respect thereto, and, in the case of the Successor Lessee, its Treasurer or any other of its officers having the rank of Vice President, or above.

The Lessor shall forbear exercising its remedies hereunder arising out of an Event of Default occurring prior to the Succession Date pursuant to this § 10 (other than an Event of Default caused by a proceeding commenced by or against the Successor Lessee referred to in item D of this § 10) if, and so long as, within 15 days of such Event of Default the Successor Lessee shall have (A) paid in full any unpaid monetary obligation then due under this Lease or (B) (i) certified to the Lessor that it is not then in default in respect of any obligation for the payment of principal and interest in respect of borrowed money, any conditional sale indebtedness or any equipment trust obligations, (ii) certified to the Lessor that it is not then in default under this Lease or under the Successor Lessee's Consent which certification shall be accompanied by an opinion of counsel, acceptable to the Lessor, to the same effect, (iii) directly assumed all the obligations of the Initial Lessee under this Lease and under the Initial Lessee's Consent pursuant to an assumption agreement in form and substance satisfactory to the Lessor and (iv) delivered to the Lessor an opinion of counsel, acceptable to the Lessor, to the effect that such assumption agreement has been duly authorized, executed and delivered by the Successor Lessor and constitutes a legal, valid and binding obligation of the Successor Lessor, enforceable in accordance with its terms and within 30 days of such Event of Default shall have, if requested so to do by the Lessor or the Agent, caused such assumption agreement to be filed and recorded in accordance with the provisions of § 15 hereof.

The Lessor agrees to execute and deliver the above-mentioned assumption agreement within 10 days after tender thereof to it by the Successor Lessee, provided that it complies with the provisions of the foregoing paragraph and is otherwise in form and substance satisfactory to it. The Initial Lessee agrees that, upon execution and delivery of such assumption agreement by the Lessor and the Successor Lessee, the Initial Lessee's leasehold interest in and to the Units shall automatically terminate and the Initial Lessee will promptly deliver possession of the Units to the

Successor Lessee and will convey, transfer or assign to the Successor Lessee all the Initial Lessee's right, title and interest in any subleases, car contracts or other agreements with respect to the Units and take any other action and execute any documents reasonably requested by the Successor Lessee or the Lessor; it being understood and agreed, however, that the Successor Lessee under such assumption agreement, this Lease and the Successor Lessee's Consent shall not be conditioned upon or affected in any way by the failure of the Initial Lessee to comply with the provisions of this sentence.

§ 11. Return of Units upon Default. If this Lease shall terminate pursuant to § 10 hereof, the Lessee shall forthwith deliver possession of the Units to the Lessor. Each Unit so delivered shall be in the same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear excepted and meet the standards then in effect of the Interchange Rules of the Association of American Railroads and/or the applicable rules of any governmental agency or other organization with jurisdiction. For the purpose of delivering possession of any Unit or Units to the Lessor as above required, the Lessee shall at its own cost, expense and risk:

(a) forthwith and in the usual manner (including, but not by way of limitation, giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any Unit or Units have been interchanged to return the Unit or Units so interchanged) place such Units upon such storage tracks of the Lessee or any of its affiliates as the Lessor reasonably may designate;

(b) permit the Lessor to store such Units on such tracks at the risk of the Lessee without charge for insurance, rent or storage until such Units have been sold, leased or otherwise disposed of by the Lessor; and

(c) transport the same to any place on the lines of railroad operated by the Lessee or any of its affiliates or to any connecting carrier for shipment, all as directed by the Lessor.

The assembling, delivery, storage, insurance and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Lessee and are of the essence of this Lease,

and upon application to any court of equity having jurisdiction in the premises the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. During any storage period, the Lessee will, at its own cost and expense, maintain and keep the Equipment in good order and repair and will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any such Unit, to inspect the same. All amounts earned in respect of the Units after the date of termination of this Lease shall belong to the Lessor and, if received by the Lessee, shall be promptly turned over to the Lessor. In the event any Unit is not assembled, delivered and stored, as hereinabove provided, within 60 days after such termination, the Lessee shall, in addition, pay to the Lessor for each day thereafter an amount equal to the amount, if any, by which .023856% of the Purchase Price of such Unit for each such day exceeds the actual earnings received by the Lessor on such Unit for each such day.

Without in any way limiting the obligation of the Lessee under the foregoing provisions of this § 11, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Unit to the Lessor, to demand and take possession of such Unit in the name and on behalf of the Lessee from whomsoever shall be in possession of such Unit at the time.

§ 12. Assignment; Possession and Use. This Lease shall be assignable in whole or in part by the Lessor without the consent of the Lessee, but the Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor. All the rights of the Lessor hereunder (including, but not limited to, the rights under §§ 6, 7, 9 and 10 and the rights to receive the rentals payable under this Lease) shall inure to the benefit of the Lessor's assigns (including the Vendor).

So long as the Lessee shall not be in default under this Lease and no event of default shall exist under the Security Documentation, the Lessee shall be entitled to the possession and use of the Units in accordance with the terms of this Lease but, without the prior written consent of the Lessor and the Vendor, the Lessee shall not

assign or transfer its leasehold interest under this Lease in the Units or any of them except and then only so long as the Lessee shall not then be in default under this Lease (and subject to this Lease and to the rights of the Lessor hereunder, and without releasing the Lessee from its obligations hereunder), to an Affiliate, or under a written sublease for a term not exceeding one year (including all renewal or extension options reserved to the sublessee or sublessor), to a railroad classified by the Interstate Commerce Commission as a Class I or Class II railroad or to a responsible company, as determined by the Lessee, subject in each case to the written consent of the Lessor, which shall not be unreasonably withheld, or, in the case of the Initial Lessee only, to The Chicago, Milwaukee, St. Paul and Pacific Railroad Company or to any such Class I or Class II railroad for a term exceeding one year but not extending beyond the Succession Date; and the Lessee shall not, without such written consent, except as provided in this § 12 part with the possession of, or suffer or allow to pass out of its possession or control, any of the Units; on or prior to the Succession Date the Initial Lessee shall transfer possession of the Units to the Successor Lessee, provided, however, that if such transfer shall occur prior to the Succession Date, the Initial Lessee shall nevertheless remain fully liable for the rental payment due on the Succession Date, and the failure of the Initial Lessee so to transfer possession of the Units on the Succession Date shall not result in reduction or modification of any rental payment payable by the Successor Lessee after the Succession Date. For the purpose of this § 12, "Affiliate" shall mean any corporation which, directly or indirectly, controls or is controlled by, or is under common control with, the Lessee. For the purposes of this definition, "control (including controlled by and under common control with)", as used with respect to any corporation, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such corporation, whether through the ownership of voting securities or by contract or otherwise. Every such sublease shall expressly subject the rights of the sublessee under such sublease to the rights of the Lessor in respect of the Units covered by such sublease in the event of the happening of an Event of Default. The Lessee, at its own expense, will promptly pay or discharge any and all sums claimed by any party which, if unpaid, might become a lien, charge, security interest or other encumbrance (other than an encumbrance created by the Lessor or the Vendor or resulting from claims against the Lessor or the Vendor not related to

the ownership of the Units) upon or with respect to any Unit or the interest of the Lessor, the Vendor or the Lessee therein, and will promptly discharge any such lien, claim, security interest or other encumbrance which arises. The Lessee shall not, without the prior written consent of the Lessor, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Units, except to the extent permitted by the provisions of the immediately succeeding paragraph.

So long as the Lessee shall not be in default under this Lease and no event of default shall exist under the Security Documentation, the Lessee shall be entitled to the possession of the Units and to the use of the Units by it or any Affiliate upon lines of railroad owned or operated by it or any such Affiliate or upon lines of railroad over which the Lessee or any such Affiliate has trackage or other operating rights or over which railroad equipment of the Lessee or any such Affiliate is regularly operated pursuant to contract, and also to permit the use of the Units upon connecting and other carriers in the usual interchange of traffic or pursuant to run-through agreements, but only upon and subject to all the terms and conditions of this Lease and the Security Documentation; provided, however, that the Lessee shall not assign or permit the assignment of any Unit to service involving the regular operation and maintenance thereof outside the United States of America. The Lessee may receive and retain compensation for such use from other railroads so using any of the Units.

Nothing in this § 12 shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease in the Units or possession of the Units to any railroad corporation incorporated under the laws of any state of the United States of America or the District of Columbia (which shall have duly assumed the obligations of the Lessee hereunder and under the Participation Agreement and the Consent (as defined in the Security Documentation)) into or with which the Lessee shall have become merged or consolidated or which shall have acquired the property of the Lessee as an entirety or substantially as an entirety, provided that such assignee or transferee will not, upon the effectiveness of such merger, consolidation or acquisition, be in default under any provision of this Lease. The assignment and transfer rights in this paragraph contained shall not, in the case of the Initial Lessee, be limited to a railroad company.

§ 13. Renewal Option; Right of First Refusal. Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, the Lessee may by written notice delivered to the Lessor not less than six months prior to the end of the original term or any extended term of this Lease, as the case may be, elect to extend the term of this Lease in respect of all but not fewer than all the Units then covered by this Lease, for additional two-year periods commencing on the scheduled expiration of the original term or any extended term of this lease, as the case may be, provided that no such extended term extends beyond October 1, 1999, at a "Fair Market Rental" payable in semiannual payments on April 1 and October 1 in each year of such extended term.

Fair Market Rental shall be determined on the basis of, and shall be equal in amount to, the rental which would obtain in an arm's-length transaction between an informed and willing lessee (other than a lessee currently in possession) and an informed and willing lessor under no compulsion to lease and, in such determination, costs of removal from the location of current use shall not be a deduction from such rental. If, after 60 days from the giving of notice by the Lessee of the Lessee's election to extend the term of this Lease, the Lessor and the Lessee are unable to agree upon a determination of the Fair Market Rental of the Units, such rental shall be determined in accordance with the foregoing definition by the following procedure: If either party to such determination shall have given written notice to the other requesting determination of such value by this appraisal procedure, the parties shall consult for the purpose of appointing a qualified independent appraiser by mutual agreement. If no such appraiser is so appointed within 20 business days after such notice is given, each party shall appoint an independent appraiser within 25 business days after such notice is given, and the two appraisers so appointed shall within 35 business days after such notice is given appoint a third independent appraiser. If no such third appraiser is appointed within 35 business days after such notice is given, either party may apply, to make such appointment, to the American Arbitration Association, and both parties shall be bound by any appointment so made. Any appraiser or appraisers appointed pursuant to the foregoing procedure shall be instructed to determine the Fair Market Rental of the Units subject to the proposed extended term within 90 days after his or their appointment. If the parties shall have appointed a single appraiser or if either party shall have failed to appoint an appraiser, the

determination of Fair Market Rental of the single appraiser appointed shall be final. If three appraisers shall be appointed, the determination of the appraiser which differs most from the other two appraisers shall be excluded, the remaining two determinations shall be averaged and such latter average shall be final and binding upon the parties hereto as the Fair Market Rental. The appraisal proceedings shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association as in effect on the date hereof, except as modified hereby. The provision for this appraisal procedure shall be the exclusive means of determining Fair Market Rental and shall be in lieu of any judicial or other procedure for the determination thereof, and each party hereto hereby consents and agrees not to assert any judicial or other procedures. The expenses of the appraisal procedure shall be borne equally by the Lessee and the Lessor.

Unless an Event of Default shall have occurred and be continuing at the end of the term of this Lease, or any event or condition which, upon lapse of time or giving of notice, or both, would constitute such an Event of Default shall have occurred and be continuing at such time, Lessor shall not, at or following the end of the term of this Lease, sell any Unit (including any sale prior to the end of such term for delivery of such Unit at or following the end of such term) unless:

(a) the Lessor shall have received from a responsible purchaser a bona fide offer in writing to purchase such Unit;

(b) the Lessor shall have given the Successor Lessee notice (i) setting forth in detail the identity of such purchaser, the proposed purchase price, the proposed date of purchase and all other material terms and conditions of such purchase, and (ii) offering to sell such Unit to the Successor Lessee upon the same terms and conditions as those set forth in such notice; and

(c) the Successor Lessee shall not have notified Lessor, within 20 days following receipt of such notice, of its election to purchase such Unit upon such terms and conditions.

If the Successor Lessee shall not have so elected to purchase

such Unit, Lessor may at any time sell such Unit to any party at a price and upon other terms and conditions no less favorable to Lessor than those specified in such notice.

Upon payment of the purchase price of any Unit, the Lessor shall upon request of the Lessee execute and deliver to the Lessee, or to the Lessee's assignee or nominee, a bill of sale (without warranties) for such Unit such as will transfer to the Lessee such title to such Unit as the Lessor derived from the Vendor, free and clear of all liens, security interests and other encumbrances arising through the Lessor.

§ 14. Return of Units upon Expiration of Term.

As soon as practicable on or after the expiration of the original or extended term of this Lease with respect to any Unit not purchased by the Lessee, the Lessee will, at its own cost and expense, at the request of the Lessor, deliver possession of such Unit to the Lessor upon such storage tracks of the Lessee as the Lessor may designate, or, in the absence of such designation, as the Lessee may select, and permit the Lessor to store such Unit on such tracks for a period not exceeding six months and transport the same, at any time within such six-month period, to any reasonable place on the lines of railroad operated by the Lessee, or to any connecting carrier for shipment, all as directed by the Lessor, the movement and storage of such Units to be at the expense and risk of the Lessee. During any such storage period the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser, lessee or user of such Unit, to inspect the same; provided, however, that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser, lessee or user, the rights of inspection granted under this sentence. Each Unit returned to the Lessor pursuant to this § 14 shall (i) be in the same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear excepted, and (ii) meet the standards then in effect under the Interchange Rules of the Association of American Railroads and/or the applicable rules of any governmental agency or other organization with jurisdiction. The assembling, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity



having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. All amounts earned in respect of the Units after the date of termination of this Lease shall belong to the Lessor and, if received by the Lessee, shall be promptly turned over to the Lessor.

§ 15. Recording. The Lessee, at its own expense, will cause this Lease, the Security Documentation and any assignment hereof or thereof to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act. The Lessee will undertake the filing, registering, deposit, and recording required of the Lessor under the Security Documentation and will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, record (and will refile, reregister, deposit and redeposit or rerecord whenever required) any and all further instruments required by law or reasonably requested by the Lessor or the Vendor for the purpose of proper protection, to their satisfaction, of the Vendor's and the Lessor's respective interests in the Units, or for the purpose of carrying out the intention of this Lease, the Security Documentation and the assignment thereof to the Vendor; and the Lessee will promptly furnish to the Vendor and the Lessor evidence of all such filing, registering, depositing or recording, and an opinion or opinions of counsel for the Lessee with respect thereto satisfactory to the Vendor and the Lessor. This Lease and the Security Documentation shall be filed and recorded with the Interstate Commerce Commission prior to the delivery and acceptance hereunder of any Unit.

§ 16. Interest on Overdue Rentals. Anything to the contrary herein contained notwithstanding, any nonpayment of rentals and other obligations due hereunder shall result in the obligation on the part of the Lessee promptly to pay, to the extent legally enforceable, an amount equal to 9-3/4% per annum of the overdue rentals and other obligations for the period of time during which they are overdue or such lesser amount as may be legally enforceable.

§ 17. Notices. Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when mailed, first class, postage prepaid, addressed as follows:

(a) if to the Lessor, at the address set forth in item 3 of Schedule B hereto;

(b) if to the Initial Lessee, at 4000 West State Street, Milwaukee, Wisconsin 53208, attention of Corporate Traffic Manager;

(c) if to the Successor Lessee, at P. O. Box 1808, Washington, D. C. 20013, attention of Vice President-Finance;

or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing. Copies of each such notice shall be given to the Vendor at P. O. Box 2258 (Two Hopkins Plaza), Baltimore, Maryland 21203, attention of Corporate Trust Department, and to GATX Leasing Corporation, One Embarcadero Center, San Francisco, California 94111, attention of Contracts Administrator.

§ 18. Severability; Effect and Modification of Lease. Any provision of this Lease which is prohibited or unenforceable in any jurisdiction, shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

Except for the Participation Agreement, this Lease exclusively and completely states the rights of the Lessor and the Lessee with respect to the leasing of the Units and supersedes all other agreements, oral or written, with respect thereto. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized signatories for the Lessor and the Lessee.

§ 19. Execution. This Lease may be executed in several counterparts, such counterparts together constituting but one and the same instrument, but the counterpart delivered to the Vendor pursuant to the Assignment hereof to the Vendor shall be deemed to be the original, and all other counterparts shall be deemed duplicates thereof. Although for convenience this Lease is dated as of the date first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

§ 20. Law Governing. The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the Commonwealth of Virginia; provided, however, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

§ 21. No Guaranty of Conditional Sale Indebtedness or Residual Value. Nothing in this Agreement is intended or shall be construed to constitute a guaranty by either Lessee of the Conditional Sale Indebtedness of the Vendee under the Security Documentation or a guaranty of the residual value of any Unit.

§ 22. Immunities; No Recourse. It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that each and all of the representations, undertakings and agreements herein made on the part of the Lessor, are made and intended not as personal representations, undertakings and agreements by The Connecticut Bank and Trust Company, or for the purpose or with the intention of binding said corporation personally but are made and intended for the purpose of binding only the Trust Estate as such term is used in the Trust Agreement and this Lease is executed and delivered by said corporation not in its own right but solely in the exercise of the powers expressly conferred upon it as trustee under the Trust Agreement; and except in the case of gross negligence or wilful misconduct, no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against said corporation or any Beneficiary on account of this Lease or on account of any representations, undertaking or agreement of the said corporation or any Beneficiary, either expressed or implied, all such personal liability, if any, being expressly waived and released by the Initial Lessee and the Successor Lessee the Vendor and by all persons claiming by, through or under either of them.

IN WITNESS WHEREOF, the parties hereto have executed or caused this instrument to be executed as of the date first above written.

MILLER BREWING COMPANY,

by

[Corporate Seal]

\_\_\_\_\_  
Vice President

Attest:

\_\_\_\_\_  
Assistant Secretary

SOUTHERN RAILWAY COMPANY,

by

\_\_\_\_\_  
Vice President

[Corporate Seal]

Attest:

\_\_\_\_\_  
Assistant Secretary

THE CONNECTICUT BANK AND TRUST  
COMPANY, as Owner Trustee,

by

[Corporate Seal]

Attest:

\_\_\_\_\_

STATE OF WISCONSIN, )  
 ) ss.:  
COUNTY OF MILWAUKEE, )

On this            day of            1977, before me personally appeared           , to me personally known, who, being by me duly sworn, says that he is            of MILLER BREWING COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

---

Notary Public

[Notarial Seal]

My Commission expires

DISTRICT OF COLUMBIA, ) ss.:

On this            day of            1977, before me personally appeared            , to me personally known, who, being by me duly sworn, says that he is the            of SOUTHERN RAILWAY COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

---

Notary Public

[Notarial Seal]

My Commission expires

STATE OF CONNECTICUT, )  
 ) SS.:  
COUNTY OF HARTFORD, )

The foregoing instrument was acknowledged before me this            day of July, 1977, by            , a            of The Connecticut Bank and Trust Company, a Connecticut banking corporation, on behalf of the corporation.

Notary Public

[Notarial Seal]

My Commission expires

SCHEDULE A TO LEASE

<u>Type</u>	<u>Quantity</u>	<u>Successor Lessee's Road Numbers (Both Inclusive)</u>
52'6" insulated 70-ton box cars	250	650-899
AAR Mechanical Designation: XPI		



# SCHEDULE B TO LEASE

Item 1: .0002431%

Item 2: Casualty Values

<u>Date</u>	<u>Percentage</u>
October 1, 1977	123.583
April 1, 1978	122.459
October 1, 1978	121.285
April 1, 1979	120.063
October 1, 1979	118.789
April 1, 1980	117.463
October 1, 1980	116.211
April 1, 1981	108.689
October 1, 1981	107.675
April 1, 1982	106.602
October 1, 1982	105.468
April 1, 1983	97.705
October 1, 1983	96.443
April 1, 1984	95.113
October 1, 1984	93.712
April 1, 1985	85.674
October 1, 1985	84.125
April 1, 1986	82.498
October 1, 1986	80.791
April 1, 1987	78.999
October 1, 1987	77.121
April 1, 1988	74.406
October 1, 1988	71.567
April 1, 1989	68.598
October 1, 1989	65.495
April 1, 1990	62.253
October 1, 1990	58.867
April 1, 1991	55.331
October 1, 1991	51.639
April 1, 1992	48.159
October 1, 1992	45.120
April 1, 1993	41.973
October 1, 1993	38.740
April 1, 1994	35.397
October 1, 1994	31.963
April 1, 1995	28.416
October 1, 1995	25.000

Item 3: One Constitution Plaza, Hartford, Connecticut 06115,  
attention of Corporate Trust Department.

ASSIGNMENT OF LEASE AND AGREEMENT dated as of May 15, 1977 (hereinafter called this Assignment), by and between THE CONNECTICUT BANK AND TRUST COMPANY (hereinafter called the Lessor or the Vendee), as Owner Trustee under a Trust Agreement dated as of April 7, 1977, as amended, and MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, as Agent (hereinafter called the Vendor) under a Participation Agreement dated as of the date hereof.

WHEREAS the Vendee is entering into a Conditional Sale Agreement dated as of the date hereof (hereinafter called the Security Documentation) with Fruit Growers Express Company (hereinafter called the Builder), providing for the sale to the Vendee of such units of railroad equipment (hereinafter called the Units) described in the Annex thereto as are delivered to and accepted by the Vendee thereunder;

WHEREAS the Lessor, Miller Brewing Company and Southern Railway Company (such last two named corporations being hereinafter collectively called the Lessee) have entered into a Lease of Railroad Equipment dated as of the date hereof (hereinafter called the Lease), providing for the leasing by the Lessor to the Lessee of the Units; and

WHEREAS, in order to provide security for the obligations of the Lessor under the Security Documentation and as an inducement to the Vendor to invest in the Conditional Sale Indebtedness (as that term is defined in the Security Documentation), the Lessor agrees to assign to the Vendor for security purposes the Lessor's rights in, to and under the Lease;

NOW, THEREFORE, in consideration of the premises and of the payments to be made and the covenants hereinafter mentioned to be kept and performed, the parties hereto agree as follows:

1. The Lessor hereby assigns, transfers and sets over unto the Vendor, as collateral security for the payment and performance of the obligations of the Lessor as Vendee under the Security Documentation, all the Lessor's right, title and interest, powers, privileges, and other benefits under the Lease, including, without limitation, the immediate

right to receive and collect all rentals, profits and other sums payable to or receivable by the Lessor from the Lessee under or pursuant to the provisions of the Lease whether as rent, casualty payment, indemnity, liquidated damages, or otherwise (such moneys being hereinafter called the Payments), and the right to make all waivers and agreements, to give all notices, consents and releases, to take all action upon the happening of an Event of Default specified in the Lease, and to do any and all other things whatsoever which the Lessor is or may become entitled to do under the Lease. In furtherance of the foregoing assignment, the Lessor hereby irrevocably authorizes and empowers the Vendor in its own name, or in the name of its nominee, or in the name of the Lessor or as its attorney, to ask, demand, sue for, collect and receive any and all Payments to which the Lessor is or may become entitled under the Lease, and to enforce compliance by the Lessee with all the terms and provisions thereof.

The Vendor agrees to accept any Payments made by the Lessee for the account of the Lessor pursuant to the Lease. To the extent received, the Vendor will apply such Payments to satisfy the obligations of the Lessor under the Security Documentation, and to provide for the payments required to be made by the Vendee pursuant to the final paragraph of Paragraph 9 of the Participation Agreement under which the Vendor is acting as agent, and, so long as no Event of Default shall have occurred and be continuing under the Security Documentation, any balance shall be paid to the Lessor on the same date such Payment is applied to satisfy such obligations of the Lessor, by check mailed to the Lessor on such date or, upon written request of the Lessor, by bank wire to the Lessor at such address as may be specified to the Vendor in writing, and such balance shall be retained by the Lessor. If the Vendor shall not receive any rental payment under the first paragraph of § 3 of the Lease when due, the Vendor shall notify the Lessor at the address set forth in the Lease; provided, however, that the failure of the Vendor so to notify the Lessor shall not affect the obligations of the Lessor hereunder or under the Security Documentation.

2. This Assignment is executed only as security and, therefore, the execution and delivery of this Assignment shall not subject the Vendor to, or transfer, or pass, or in any way affect or modify the liability of the Lessor under the Lease, it being understood and agreed that notwith-

standing this Assignment or any subsequent assignment, all obligations of the Lessor to the Lessee shall be and remain enforceable by the Lessee, its successors and assigns, against, and only against, the Lessor or persons other than the Vendor.

3. The Lessor will faithfully abide by, perform and discharge each and every obligation, covenant and agreement which the Lease provides is to be performed by the Lessor; without the written consent of the Vendor, the Lessor will not anticipate the rents under the Lease or waive, excuse, condone, forgive or in any manner release or discharge the Lessee thereunder of or from the obligations, covenants, conditions and agreements to be performed by the Lessee, including, without limitation, the obligation to pay the rents in the manner and at the time and place specified therein or enter into any agreement amending, modifying or terminating the Lease, and the Lessor agrees that any amendment, modification or termination thereof without such consent shall be void.

4. The Lessor does hereby constitute the Vendor the Lessor's true and lawful attorney, irrevocably, with full power (in the name of the Lessor, or otherwise), to ask, require, demand, receive and compound any and all Payments due and to become due under or arising out of the Lease to which the Lessor is or may become entitled, to enforce compliance by the Lessee with all the terms and provisions of the Lease, to endorse any checks or other instruments or orders in connection therewith and to file any claims or take any action or institute any proceedings which to the Vendor may seem to be necessary or advisable in the premises.

5. Upon the full discharge and satisfaction of all sums due from the Lessor under the Security Documentation, this Assignment and all rights herein assigned to the Vendor shall terminate, and all estate, right, title and interest of the Vendor in and to the Lease shall revert to the Lessor.

6. The Lessor will pay and discharge any and all claims, liens, charges or security interests (other than created by the Security Documentation) on the Lease or the rentals or other payments due or to become due thereunder claimed by any party from, through or under the Lessor, or its successors and assigns (other than the Vendor), not arising out of the transactions contemplated by the Security

Documentation or the Lease (but including tax liens arising out of the receipt of the income and proceeds from the Units) which, if unpaid, might become a claim, lien, charge or security interest on or with respect to the Lease or such rentals or other payments equal or superior to the Vendor's interest therein, unless the Lessor shall be contesting the same in good faith by appropriate proceedings in any reasonable manner and the nonpayment thereof does not, in the reasonable opinion of the Vendor, adversely affect such interests of the Vendor.

7. The Lessor will, from time to time, execute, acknowledge and deliver any and all further instruments required by law as reasonably requested by the Vendor in order to confirm or further assure, the interest of the Vendor hereunder.

8. The Vendor may assign all or any of the rights assigned to it hereby or arising under the Lease, including, without limitation, the right to receive any Payments due or to become due. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Vendor hereunder.

9. This Assignment shall be governed by the laws of the Commonwealth of Virginia, but the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

10. The Lessor shall cause copies of all notices received in connection with the Lease and all payments hereunder to be promptly delivered or made to the Vendor at its address set forth in Article 20 of the Security Documentation, or at such other address as the Vendor shall designate.

11. The Vendor hereby agrees with the Lessor that the Vendor will not, so long as no Event of Default under the Lease or event of default under the Security Documentation has occurred and is continuing, exercise or enforce, or seek to exercise or enforce, or avail itself of, any of the rights, powers, privileges, authorizations or benefits which are assigned and transferred by the Lessor to the Vendor by this Assignment, except the right to receive and apply the Payments as provided in Paragraph 1 hereof, and that, subject to the terms of the Lease and the Security Documentation,

the Lessor may, so long as no event of default under the Security Documentation or Event of Default under the Lease has occurred and is continuing, exercise or enforce, or seek to exercise or enforce or avail itself of, such rights, powers, privileges, authorizations or benefits.

12. Notwithstanding any other provision of this Assignment (including, but not limited to, any provision of the first paragraph of Paragraph 1 and Paragraph 3 hereof) (a) the terms of this Assignment shall not impose any obligations on the Lessor in addition to the obligations of the Lessor under the Lease or under the Security Documentation or in any way limit the effect of the last paragraph of Article 4 of the Security Documentation, Article 21 of the Security Documentation or Section 22 of the Lease, and (b) so long as there is no event of default under the Security Documentation, and to the extent that the Vendor does not seek to receive and collect any Payments under the Lease in excess of the amounts required to discharge the obligations of the Lessor under the Security Documentation, the terms of this Assignment shall not limit or in any way affect the Lessor's right to receive and collect any Payments under the Lease in excess of the obligations of the Lessor under the Security Documentation, or empower the Vendor in any way to waive or release the Lessee's obligation to pay such excess amounts, and the Lessor shall continue to be empowered to ask, demand, sue for, collect and receive any and all of such excess amounts, but shall not take any action under subparagraph (b) of Section 10 of the Lease without the written consent of the Vendor, and (c) each and all of the representations, undertakings and agreements herein made on the part of the Lessor are each and every one of them made and intended not as personal representations, undertakings and agreements by The Connecticut Bank and Trust Company or for the purpose or with the intention of binding said corporation personally but are made and intended for the purpose of binding only the Trust Estate as such term is used in the Trust Agreement, and this Assignment is executed and delivered by the said corporation solely in the exercise of its powers expressly conferred upon it as trustee under the Trust Agreement, and that no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against said corporation, except for wilful misconduct or gross negligence, or against any Beneficiary under the Trust Agreement or on account of any representation, undertaking or agreement of the Lessor or any Beneficiary, either expressed or implied, all such personal liability, if any, being expressly waived and released by the Vendor and by all persons claiming by,

through or under the Vendor; provided, however, that the Vendor or any person claiming by, through or under it, making claim hereunder, may look to said Trust Estate for satisfaction of the same.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in their respective corporate names by officers thereunto duly authorized, and their respective corporate seals to be affixed and duly attested, all as of the date first above written.

THE CONNECTICUT BANK AND TRUST  
COMPANY, as Owner Trustee,

by

\_\_\_\_\_

[Corporate Seal]

Attest:

\_\_\_\_\_

MERCANTILE-SAFE DEPOSIT AND TRUST  
COMPANY, as Agent,

by

\_\_\_\_\_

[Corporate Seal]

Assistant Vice President

Attest:

\_\_\_\_\_

Corporate Trust Officer

STATE OF CONNECTICUT,   )  
  ) ss.:  
COUNTY OF HARTFORD,    )

          The foregoing instrument was acknowledged before me  
this       day of July, 1977, by                               , a  
  of The Connecticut Bank and Trust Company,  
a Connecticut banking corporation, on behalf of the corporation.

---

Notary Public

[Notarial Seal]

My Commission expires





## CONSENT AND AGREEMENT

The undersigned, MILLER BREWING COMPANY, a Wisconsin corporation (hereinafter called the Lessee), the Initial Lessee named in the Lease (hereinafter called the Lease) referred to in the foregoing Assignment of Lease and Agreement (hereinafter called the Lease Assignment), hereby (a) acknowledges receipt of a copy of the Lease Assignment and (b) consents to all the terms and conditions of the Lease Assignment and agrees that:

(1) it will pay all rentals, casualty payments, liquidated damages, indemnities and other moneys provided for in the Lease (which moneys are hereinafter called the Payments) due and to become due under the Lease or otherwise in respect of the Units leased thereunder, directly to Mercantile-Safe Deposit and Trust Company, as Agent (hereinafter called the Vendor), the assignee named in the Lease Assignment, at P. O. Box 2258 (Two Hopkins Plaza), Baltimore, Maryland 21203, attention of Corporate Trust Department (or at such other address as may be furnished in writing to the Lessee by the Vendor);

(2) the Vendor shall be entitled to the benefits of, and to receive and enforce performance of, all the covenants to be performed by the Lessee under the Lease as though the Vendor were named therein as the Lessor;

(3) the Vendor shall not, by virtue of the Lease Assignment or this Consent and Agreement, be or become subject to any liability or obligation under the Lease or otherwise; and

(4) the Lease shall not, without the prior written consent of the Vendor, be terminated or modified, nor shall any action be taken or omitted by the Lessee the taking or omission of which might result in an alteration or impairment of the Lease or the Lease Assignment or this Consent and Agreement or of any of the rights created by any thereof.

This Consent and Agreement, when accepted by the Vendor by signing the acceptance at the foot hereof, shall be deemed to be a contract under the laws of the State of

Wisconsin and, for all purposes, shall be construed in accordance with the laws of said State.

MILLER BREWING COMPANY, as Lessee,

by

[Corporate Seal]

\_\_\_\_\_  
Vice President

Attest:

\_\_\_\_\_  
Assistant Secretary

The foregoing Consent and Agreement is hereby accepted, as of the 15th day of May 1977.

MERCANTILE-SAFE DEPOSIT AND TRUST  
COMPANY, as Agent,

by

\_\_\_\_\_  
Assistant Vice President

## CONSENT AND AGREEMENT

The undersigned, SOUTHERN RAILWAY COMPANY, a Virginia corporation (hereinafter called the Lessee), the Successor Lessee named in the Lease (hereinafter called the Lease) referred to in the foregoing Assignment of Lease and Agreement (hereinafter called the Lease Assignment), hereby (a) acknowledges receipt of a copy of the Lease Assignment and (b) consents to all the terms and conditions of the Lease Assignment and agrees that:

(1) it will pay all rentals, casualty payments, liquidated damages, indemnities and other moneys provided for in the Lease (which moneys are hereinafter called the Payments) due and to become due under the Lease or otherwise in respect of the Units leased thereunder, directly to Mercantile-Safe Deposit and Trust Company, as Agent (hereinafter called the Vendor), the assignee named in the Lease Assignment, at P. O. Box 2258 (Two Hopkins Plaza), Baltimore, Maryland 21203, attention of Corporate Trust Department (or at such other address as may be furnished in writing to the Lessee by the Vendor);

(2) the Vendor shall be entitled to the benefits of, and to receive and enforce performance of, all the covenants to be performed by the Lessee under the Lease as though the Vendor were named therein as the Lessor;

(3) the Vendor shall not, by virtue of the Lease Assignment or this Consent and Agreement, be or become subject to any liability or obligation under the Lease or otherwise; and

(4) the Lease shall not, without the prior written consent of the Vendor, be terminated or modified, nor shall any action be taken or omitted by the Lessee the taking or omission of which might result in an alteration or impairment of the Lease or the Lease Assignment or this Consent and Agreement or of any of the rights created by any thereof.

This Consent and Agreement, when accepted by the Vendor by signing the acceptance at the foot hereof, shall be deemed to be a contract under the laws of the Commonwealth

of Virginia and, for all purposes, shall be construed in accordance with the laws of said Commonwealth.

SOUTHERN RAILWAY COMPANY, as Lessee,

by

[Corporate Seal]

\_\_\_\_\_  
Vice President

Attest:

\_\_\_\_\_  
Assistant Secretary

The foregoing Consent and Agreement is hereby accepted, as of the 15th day of May 1977.

MERCANTILE-SAFE DEPOSIT AND TRUST  
COMPANY, as Agent,

by

\_\_\_\_\_  
Assistant Vice President